

15-1200

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**United States Court of Appeals**  
**FOR THE SECOND CIRCUIT**

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M.M., on behalf of and as Parent of J.S.,  
a student with a disability,

*Plaintiff-Appellant,*

v.

NEW YORK CITY DEPARTMENT OF EDUCATION,

*Defendant-Appellee.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**JOINT APPENDIX**  
**VOLUME III of IV**  
**Pages A380 – A539 (Transcript Pages 1–295)**  
**REDACTED**

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\* This decision was misdated by the OSR. The cover letter accompanying the decision was dated March 18, 2014. Upon information and belief, this is the correct date of the decision.

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DEPARTMENT OF EDUCATION  
Of the  
CITY OF NEW YORK

-----  
In the Matter of:

J. [REDACTED] S. [REDACTED]

Case No.: 143983

-----X

**REPLACEMENT**

District #2  
131 Livingston St.  
Brooklyn, NY 11201

Thursday  
May 16, 2013

The above-entitled matter came on for hearing  
at 12:22 p.m.

BEFORE: MARY NOE,  
Impartial Hearing Officer

A P P E A R A N C E S:

For the Student:

AMANDA SEN, Attorney  
TODD SILVERBLATT, Attorney  
M. [REDACTED] M. [REDACTED], Parent  
KATHERINE HIBBARD, Teacher  
MERCEDES PENA, Interpreter

For the Department of Education:

BRITTANIA STEWART, Attorney  
SUSAN NACLERIO, IEP/Related Services Coordinator  
(Via Telephone)  
EVELYN ALVAREZ, Special Ed Teacher (Via Telephone)

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE DIRECT</u>	<u>RE CROSS</u>	<u>V. D.</u>	<u>J</u>
S. Naclerio	--	6	14	15		
K. Hibbard	--	19	31	44		
E. Alvarez	--	56	108	109		

E X H I B I T S

<u>PARENT</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
A	Affidavit of K. Hibbard, dated 5/10/13	18	19

<u>DEPARTMENT OF EDUCATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
3	IEP	67	68
4	Not identified	--	--
5	Psychoed eval	101	102
6	Not identified	--	--
11	Meeting minutes	70	70
14	Cooke Center assessment portfolio	35	35
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P R O C E E D I N G S

HEARING OFFICER MARY NOE: Good afternoon. My name is Mary Noe. I'm the Hearing Officer for [REDACTED] [REDACTED], Case Number 143393. I am going to ask everyone on my left to identify themselves.

MR. TODD SILVERBLATT: I'm Todd Silverblatt. I am--

(Crosstalk)

MR. SILVERBLATT: --an attorney for Partnership for Children's Rights--

(Crosstalk)

MS. AMANDA SEN: I am Amanda Sen, an attorney for Partnership for Children's Rights, representing the parent.

MS. MERCEDES PENA: Mercedes Pena, the Spanish interpreter.

MS. M [REDACTED] M [REDACTED]: I'm M [REDACTED] M [REDACTED], --

MS. M [REDACTED] (THROUGH INTERPRETER): I am the mother of [REDACTED] [REDACTED].

MS. BRITTANIA STEWART: Brittania Stewart, attorney for the Department of Education.

HEARING OFFICER NOE: And we have  
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someone on--oh, not yet?

MS. STEWART: I put her on hold.

HEARING OFFICER NOE: Okay. Just put her on hold. Just wait one second. This student's date of birth is [REDACTED] 199--

FEMALE VOICE: (Interposing) [REDACTED]

HEARING OFFICER NOE: [REDACTED] 1994.

Okay. His classification is autism. The IEP challenged is 2012-2013. He is currently in the Cooke School, and I just want to again apologize. This case was on my calendar, however, a previous case that I had been carrying over was not on the calendar, which they needed a Russian interpreter, and it's been delayed because of the Russian interpreter, so we probably will need another date. We've already looked at--Miss Stewart, we've already look at May 29<sup>th</sup>. You can look at it when you get a chance.

MS. STEWART: Okay.

HEARING OFFICER NOE: We have a witness on the phone, so can you put that witness on?

MS. STEWART: Okay.

HEARING OFFICER NOE: Miss Naclerio?

MS. SUSAN NACLERIO: Yes?

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1 MS. STEWART: Okay.

2 HEARING OFFICER NOE: Hi. This is

3 Hearing Officer Mary Noe. I'm here--I'm the

4 Impartial Hearing Officer for J [REDACTED] S [REDACTED]. Do

5 you swear or affirm to tell the truth?

6 MS. NACLERIO: Yes.

7 HEARING OFFICER NOE: State your name

8 and whatever position you hold.

9 MS. NACLERIO: My name is Susan

10 Naclerio, and I hold a position of IEP

11 coordinator.

12 HEARING OFFICER NOE: Okay. Do you want

13 to get her affidavit in first?

14 MS. STEWART: Yes. Sorry. The District

15 would like to enter into evidence Miss Naclerio's

16 affidavit. Right now, it's marked as Exhibit 21.

17 HEARING OFFICER NOE: Exhibit 21 is five

18 pages. Miss Naclerio, did you sign an affidavit

19 dated May 9<sup>th</sup>, 2013

20 MS. NACLERIO: Yes, I did.

21 HEARING OFFICER NOE: Okay. And you

22 swear that all the information in there was

23 correct when you signed it, and is correct today?

24 MS. NACLERIO: Yes, I do.

25 HEARING OFFICER NOE: Any objection?

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1 MS. NACLERIO: No.

2 (Whereupon, District Exhibit 21 was

3 admitted into evidence.)

4 HEARING OFFICER NOE: Okay. The

5 parent's attorneys have some--or parent's

6 attorney has some questions for you.

7 MS. NACLERIO: Okay.

8 MS. SEN: Miss Naclerio, you did not

9 personally meet Miss M [REDACTED] when she visited - -

10 McSweeney in June of 2012. Is that correct?

11 MS. NACLERIO: Yes.

12 MS. SEN: Okay. So you did not know

13 what was said to Miss M [REDACTED] during that visit?

14 MS. NACLERIO: That's correct.

15 MS. SEN: Okay. And did you review

16 J [REDACTED] S [REDACTED]'s IEP?

17 MS. NACLERIO: Yes, I did.

18 MS. SEN: Okay. When did you review

19 that?

20 MS. NACLERIO: I reviewed it when it was

21 sent to me via e-mail, and then I reviewed it

22 again last night.

23 MS. SEN: Okay. Can you tell me when it

24 was sent to you via e-mail that you first

25 reviewed it?

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1 MS. NACLERIO: I can look in my e-mail  
 2 if you like.  
 3 MS. SEN: Could you give me an estimate?  
 4 MS. NACLERIO: Not really. Let me--  
 5 it'll take a second.  
 6 HEARING OFFICER NOE: No, no, no. You  
 7 can't look at anything--  
 8 MS. NACLERIO: (Interposing) Oh. All  
 9 right. No, I mean, I get these--  
 10 (Crosstalk)  
 11 MS. NACLERIO: --on a weekly basis, so I  
 12 don't really know when I got it.  
 13 MS. SEN: Okay. So did you review it  
 14 within--is it within the last month?  
 15 MS. NACLERIO: Yes. I reviewed it last  
 16 night before I decided to--before the hearing.  
 17 MS. SEN: No. For the first time. Did  
 18 you--  
 19 MS. NACLERIO: (Interposing) Oh, yes.  
 20 Probably was about a month ago.  
 21 MS. SEN: About a month ago. Okay. And  
 22 how long did you spend reviewing the IEP?  
 23 MS. NACLERIO: About a half hour.  
 24 MS. SEN: Okay. Miss Naclerio, how do  
 25 you know that the Placement Office recommended

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1 McSweeney (phonetic) for J [REDACTED] for the 2012-2013  
 2 school year?  
 3 MS. NACLERIO: I don't know that for a  
 4 fact.  
 5 MS. SEN: Okay. But you did state in  
 6 your affidavit that the Placement Office  
 7 recommended.  
 8 MS. NACLERIO: Well, I was told, but I  
 9 did not see any definite information.  
 10 MS. SEN: Okay. And how do you know  
 11 that there was a space for J [REDACTED] at McSweeney?  
 12 MS. NACLERIO: Because I reviewed our  
 13 class rosters for the summer, and we did have  
 14 openings.  
 15 MS. SEN: Okay. And for the academic  
 16 year?  
 17 MS. NACLERIO: For this academic year,  
 18 yes.  
 19 MS. SEN: And what did you mean by  
 20 space?  
 21 MS. NACLERIO: There were 12:1:1 classes  
 22 that were not filled to capacity with 12:1:1  
 23 students, and they also had grade levels that  
 24 were similar to J [REDACTED] s.  
 25 MS. SEN: Okay. So since as you state

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1 that you do not make specific classroom  
2 assignments until parents actually enroll their  
3 student, how can you say for sure that you had an  
4 appropriate class for [REDACTED]?

5 MS. STEWART: I'm going to object to  
6 that, because I don't believe the witness put in  
7 her affidavit that she was testifying that the  
8 school had an appropriate placement for the  
9 student.

10 MS. SEN: So is it your testimony that  
11 the school had an appropriate placement for the  
12 student?

13 MS. NACLERIO: Based on our numbers, I  
14 can say yes.

15 MS. SEN: Okay. So how did you know  
16 that there was a space that was appropriate for  
17 him?

18 MS. STEWART: I am also going to object  
19 to that as not being raised in the Due Process  
20 Complaint. The parent did not allege that the  
21 school did not have a spot for the student, so  
22 that would be outside the scope of the Complaint.

23 HEARING OFFICER NOE: Can you just re-  
24 word the question, because to be honest with you,  
25 I'm not sure I'm understanding.

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1 MS. SEN: Okay.

2 HEARING OFFICER NOE: Okay?

3 MS. SEN: Yeah.

4 HEARING OFFICER NOE: Or break it down,  
5 or... I'm just not clear on what it is that you're  
6 asking.

7 MS. SEN: I'm just going to not - - that  
8 line of questioning. I'm just going to ask is  
9 placing students in classes part of your job?  
10 Ma'am?

11 MS. NACLERIO: Yes.

12 MS. SEN: Miss Naclerio? Is that your  
13 name? Sorry.

14 MS. STEWART: Yes.

15 MS. SEN: Naclerio? Okay. Miss  
16 Naclerio, is placing students in classes part of  
17 your job?

18 MS. NACLERIO: No.

19 MS. SEN: And you state in paragraph 16  
20 of your affidavit that there is no more than a  
21 three-year difference between students in  
22 classrooms. Is that correct?

23 MS. NACLERIO: That is correct.

24 MS. SEN: Okay. And what about work  
25 sites?

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1 MS. NACLERIO: That is the same.  
 2 MS. SEN: And how do you know that?  
 3 MS. NACLERIO: Because it's school  
 4 policy. We follow the state recommendations.  
 5 MS. SEN: So you just--so the school  
 6 policy is no more than a three-year age  
 7 difference. Is that correct?  
 8 MS. NACLERIO: That is correct.  
 9 MS. SEN: You describe part time  
 10 vocational placements in paragraph 23, but you  
 11 also mention that vocational work placements can  
 12 be full time.  
 13 MS. NACLERIO: That is correct.  
 14 MS. SEN: Okay. And are there  
 15 placements where students are at work sites for  
 16 full days?  
 17 MS. NACLERIO: Yes, they are.  
 18 MS. SEN: And for more than two to three  
 19 days per week?  
 20 MS. NACLERIO: Yes, they are.  
 21 MS. SEN: And can you say that [REDACTED]  
 22 would not have been placed in a full day  
 23 vocational program like that?  
 24 MS. NACLERIO: No, I can not.  
 25 MS. SEN: And if [REDACTED] was in a full day

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1 vocational program, would he have an opportunity  
 2 to conduct actual real-life banking transactions?  
 3 MS. NACLERIO: I can't speak to what the  
 4 work site teachers do as part of their curriculum  
 5 and training.  
 6 MS. SEN: Okay. If he was in a part  
 7 time vocational program, would he have an  
 8 opportunity to conduct actual real-life banking  
 9 transactions?  
 10 MS. NACLERIO: If that is part of the  
 11 teacher's curriculum, and if it's in his IEP.  
 12 MS. SEN: Okay.  
 13 MS. NACLERIO: He would be.  
 14 MS. SEN: Okay. So do students at  
 15 McSweeney go to real banking institutions?  
 16 MS. NACLERIO: They have.  
 17 MS. SEN: Okay. And is that part of the  
 18 curriculum at McSweeney?  
 19 MS. NACLERIO: No.  
 20 MS. SEN: And if [REDACTED] was in a full day  
 21 vocational program, would he have instruction on  
 22 using the internet at that work site?  
 23 MS. NACLERIO: Yes, he would have the  
 24 potential to have that.  
 25 MS. SEN: So the potential.

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1 MS. NACLERIO: Well, it's there. They  
 2 all have--most of the off sites have internet  
 3 access.  
 4 MS. SEN: Okay. So most do.  
 5 MS. NACLERIO: Um-hm.  
 6 MS. SEN: But you also said earlier you  
 7 can't speak to what work site teachers do.  
 8 MS. NACLERIO: That is correct.  
 9 MS. SEN: And so since you said most had  
 10 internet access, you say that some do not?  
 11 MS. NACLERIO: I believe so. Yes.  
 12 MS. SEN: Okay. And would it have been  
 13 okay under U ■■■'s May 2012 IEP to place him in a  
 14 part time vocational program?  
 15 MS. NACLERIO: I believe that his goals  
 16 could have been--  
 17 MS. SEN: (Interposing) I'm sorry.  
 18 MS. NACLERIO: --worked on at the work  
 19 study site, yes.  
 20 MS. SEN: My question is not what his  
 21 goals could have been. My goals would have been--  
 22 -I mean my question is would his IEP have allowed  
 23 him to be placed in a part time vocational  
 24 program? Is there anything in the IEP that  
 25 precludes that?

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1 MS. NACLERIO: No.  
 2 MS. SEN: Okay. And how about a full  
 3 time vocational program? Is there anything in  
 4 the IEP that precludes that?  
 5 MS. NACLERIO: No.  
 6 MS. SEN: And as part of your job, are  
 7 you involved in writing IEPs?  
 8 MS. NACLERIO: Not directly. I review  
 9 IEPs the teachers have written.  
 10 MS. SEN: Okay. Okay. That's all my  
 11 questions.  
 12 HEARING OFFICER NOE: Do you have any  
 13 redirect?  
 14 MS. STEWART: Yes. I just have a couple  
 15 of follow-up questions. Miss Naclerio, you  
 16 mentioned during your cross that there are  
 17 students that do full day vocational programs.  
 18 The students that do the full day vocational  
 19 programs, do they work on academic?  
 20 MS. NACLERIO: Yes, they do.  
 21 MS. STEWART: And how do they work on  
 22 academics, if you know?  
 23 MS. NACLERIO: They work on literacy  
 24 skills, reading skills, they work on functional  
 25 math skills, they work on employment skills, such

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1 as creating resumes, and filling out  
2 applications.

3 MS. STEWART: Now how do they work on  
4 those skills when they're at a work site?

5 MS. NACLERIO: The work site has built  
6 into it a time during the day when they do  
7 academics, and a time during the day when they go  
8 out and work in the community-based program.

9 MS. STEWART: Okay. And that's even for  
10 students that do the full time--

11 MS. NACLERIO: (Interposing) Yes.

12 MS. STEWART: --vocational program?

13 MS. NACLERIO: Yes.

14 MS. STEWART: Okay. I don't have  
15 anything else, Miss Naclerio.

16 MS. SEN: Miss Naclerio, do you know how  
17 long students at work sites spend working on  
18 academics every day who are in full time  
19 vocational programs?

20 MS. NACLERIO: Between one and two hours  
21 a day, depending on the program and the agreement  
22 they have with the community based work study  
23 site.

24 MS. SEN: Okay. Thank you.

25 HEARING OFFICER NOE: Thank you for your

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16

1 testimony.

2 MS. NACLERIO: Okay. Thank you.

3 HEARING OFFICER NOE: Okay. Do we have  
4 another witness?

5 MS. STEWART: Okay. I'm going to hang  
6 up. My second witness is not available till 2.  
7 I mentioned that during--we had a conference  
8 back--

9 HEARING OFFICER NOE: (Interposing)  
10 Okay. Do you want to call a witness? Okay. I  
11 have to tell you it's a pleasure listening to  
12 this interpreter interpret after I have gone  
13 through three and four Russian interpreters who  
14 have stared at me, and I have to remember to  
15 remind them that they are here to interpret. I  
16 can't even begin to tell you what a pleasure this  
17 is. We have had such difficulty. It's been  
18 very, very discouraging, because if I don't  
19 remember to tell them to interpret, they stand  
20 there, and I'm not exactly sure why they think  
21 they're here, but this is a pleasure.

22 MS. PENA: Thank you.

23 HEARING OFFICER NOE: Thank you. This  
24 interpreter that we have is pretty good. We need  
25 to hold onto her. Okay. So who do you want to

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17

1 call?

2 MS. SEN: I am going to call Katherine

3 Hibbard.

4 HEARING OFFICER NOE: Okay.

5 MS. STEWART: It's J [REDACTED]'s current math

6 and literacy teacher.

7 HEARING OFFICER NOE: Okay. That's

8 Exhibit I. Go ahead. We'll go off the record

9 while she's trying to get her on the phone.

10 (OFF THE RECORD)

11 (ON THE RECORD)

12 MS. KATHERINE HIBBARD: Hi. Kate

13 Hibbard.

14 MS. SEN: Hi, Kate. It's Amanda.

15 You're on--we're here at the hearing, and you're

16 going to be called for cross-examination now.

17 MS. HIBBARD: Okay. Hi, Amanda.

18 MS. SEN: Hi.

19 HEARING OFFICER NOE: We're on the

20 record, right? Okay. Good. This is Hearing

21 Officer Mary Noe. We are here at the impartial

22 hearing for J [REDACTED] S [REDACTED]. Do you swear or

23 affirm to tell the truth?

24 MS. HIBBARD: I do.

25 HEARING OFFICER NOE: Okay. State your

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1 name and whatever position you hold.

2 MS. HIBBARD: My name is Katherine

3 Strong Hibbard, and I am holding a position at

4 the Skills Program at Cooke Center Academy as

5 head teacher of literacy and mathematics.

6 HEARING OFFICER NOE: Okay. You want to

7 get her affidavit in?

8 MS. SEN: Yes.

9 HEARING OFFICER NOE: Go ahead. You

10 have to kind of go through it and just identify

11 that she signed it, that she testifies that all

12 of this was true, and...

13 MS. SEN: So, Miss Hibbard, you signed

14 an affidavit on May 10<sup>th</sup>, 2013, correct?

15 MS. HIBBARD: Correct.

16 MS. SEN: Okay. And do you attest that

17 everything in the affidavit was and still is

18 true?

19 MS. HIBBARD: Yes, I do.

20 HEARING OFFICER NOE: Okay. Do you have

21 any objection?

22 MS. STEWART: No.

23 MS. HIBBARD: No objection.

24 HEARING OFFICER NOE: Well, everybody's

25 in agreement with that, so we'll allow that into

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19

1 evidence.

2 (Whereupon, Parents' Exhibit A was  
3 admitted into evidence.)

4 HEARING OFFICER NOE: Now we have some  
5 questions for you from the District's attorney.  
6 Go ahead.

7 MS. STEWART: Okay. Miss Hibbard, did  
8 you review any documents in preparation for your  
9 testimony today?

10 MS. HIBBARD: Yes, I did.

11 MS. STEWART: What did you review?

12 MS. HIBBARD: I reviewed the affidavit  
13 that was just admitted, and I reviewed my files  
14 on J [REDACTED], who's discussed as J [REDACTED], but who has  
15 asked to be referred to as J [REDACTED], so I will refer  
16 to him as J [REDACTED], and I've reviewed my files in my  
17 classroom so that I have a refreshed memory as to  
18 his functional levels.

19 MS. STEWART: Okay. Did you review any  
20 other affidavits aside from your own?

21 MS. HIBBARD: No, I did not.

22 MS. STEWART: Okay. Miss Hibbard, what  
23 grades are your certifications in?

24 MS. HIBBARD: I am certified in middle  
25 childhood education.

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20

1 MS. STEWART: Okay. And is that special  
2 education or general education?

3 MS. HIBBARD: Yes, I'm dual certified in  
4 middle childhood education and in special  
5 education.

6 MS. STEWART: Miss Hibbard, there are  
7 only about 36 students in the Cooke Skills  
8 Program, right?

9 MS. HIBBARD: That's about correct, I  
10 think.

11 MS. STEWART: Can you explain what the  
12 Cooke Skills Program is?

13 MS. HIBBARD: Yes. I can explain it in  
14 my own words. The Cooke Skills Program is a  
15 transition program designed to help students with  
16 special needs prepare for post-secondary life.

17 MS. STEWART: Okay. And how do you help  
18 them prepare for post-secondary life?

19 MS. HIBBARD: I help them prepare for  
20 post-secondary life by helping them use their  
21 knowledge of academic skills in literacy and  
22 mathematics, and take that knowledge and apply it  
23 in real-life setting and situations that they  
24 would experience at home, in the work force, and  
25 in the community.

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1 MS. STEWART: Okay. How many students  
2 are in your class at the beginning of the school  
3 year?

4 MS. HIBBARD: In J■■■■'s class at the  
5 beginning of the school year, there were six  
6 students.

7 MS. STEWART: Okay. And you've been  
8 J■■■■'s teacher since September, right?

9 MS. HIBBARD: That's correct.

10 MS. STEWART: Do you know how many  
11 students were in his class during the summer?

12 MS. HIBBARD: I do not know.

13 MS. STEWART: And in your class, how  
14 many students are in that class now?

15 MS. HIBBARD: There are five students  
16 now.

17 MS. STEWART: Okay. And in your class,  
18 it's just you, correct? There is no classroom  
19 paraprofessional or assistant teacher?

20 MS. HIBBARD: That's correct. I am the  
21 only teacher in the classroom.

22 MS. STEWART: Now you mention in your  
23 affidavit that J■■■■ is a student that requires  
24 frequent teacher check ins. Are there other  
25 students in your class that require frequent

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1 teacher check ins?

2 MS. HIBBARD: There is another student  
3 who requires frequent teacher check ins.

4 MS. STEWART: And you also mention that  
5 he requires redirection. Are there other  
6 students in your class that require redirection?

7 MS. HIBBARD: Yes. Every--no. Sorry.  
8 Four of my student require frequent redirection.

9 MS. STEWART: Okay. Now in your  
10 affidavit, you mention that J■■■■ requires one-  
11 to-one teaching to learn new material and a  
12 teacher sitting next to him. Is that correct?

13 MS. HIBBARD: Yes, as my observations  
14 show that he is unable to learn new material that  
15 he's never been introduced to before without the  
16 support of a one-to-one lesson.

17 MS. STEWART: Okay. So how much one-to-  
18 one do you provide him on a typical day?

19 MS. HIBBARD: I would say every day, he  
20 gets seven minutes of one-to-one in his math  
21 class, and in his literacy class, he gets about  
22 eight or nine minutes of one-to-one every day.  
23 Well, every time that he's in my class. However,  
24 I just want to add that on one day of the week in  
25 our literacy class, J■■■■ meets with me one-on-

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1 one for ten minutes in a scheduled reading  
2 assessment and reflection meeting, and then in  
3 math, there's one day a week where he meets with  
4 me in a one-to-one setting, also for ten minutes.

5 MS. STEWART: Okay. And what are the  
6 other students doing when you're meeting with him  
7 one-to-one?

8 MS. HIBBARD: On those days, they're set  
9 aside so students are working on independent  
10 projects, and they rotate through one-to-one  
11 settings with me--those students who need to be  
12 in a one-to-one setting in order to learn new  
13 material.

14 MS. STEWART: Okay. Is J [REDACTED] able to  
15 work independently?

16 MS. HIBBARD: Yes, he is able to work  
17 independently on material that he's been made  
18 very familiar with.

19 MS. STEWART: Now in your affidavit, you  
20 talk about his performance during the last school  
21 year, but you weren't one of his last school  
22 year, correct?

23 MS. HIBBARD: I'm sorry. Could you  
24 refresh my memory? Where do I mention how he  
25 performed in the last school year?

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1 MS. STEWART: Number 15. Halfway  
2 through, you said prior to this year.

3 MS. HIBBARD: Oh, thank you. Yes. So  
4 may I clarify?

5 MS. STEWART: No. The question was, you  
6 weren't his teacher last year, right?

7 MS. HIBBARD: I was not his teacher last  
8 year.

9 MS. STEWART: Okay. When did you first  
10 meet J [REDACTED]?

11 MS. HIBBARD: I met him when I saw in to  
12 observe him as a student in his high school class  
13 in 2012, and it was in the spring. I forget the  
14 month.

15 MS. STEWART: And why were you observing  
16 him in his--you described it as a high school  
17 class--in spring 2012? Why were you observing  
18 him?

19 MS. HIBBARD: I was observing him in the  
20 class, in his literacy class that he took before  
21 coming into my classroom, because it's a practice  
22 that skills, as any teacher should have this  
23 practice, of observing the student before they  
24 come into your classroom so you can prepare for  
25 any accommodations or routines that should be

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1 established immediately upon entry into the  
 2 classroom.  
 3 MS. STEWART: Okay. And when you say  
 4 you observed him in a high school class, what do  
 5 you mean by high school class?  
 6 MS. HIBBARD: The setting was similar to  
 7 our setting, that it's in a high school  
 8 classroom.  
 9 MS. STEWART: Okay. So when was the  
 10 determination made that he would be moving to the  
 11 Cooke Skills Program?  
 12 MS. HIBBARD: I don't know.  
 13 MS. STEWART: Was it made before you  
 14 observed him in the class in spring 2012--  
 15 MS. SEN: (Interposing) Objection--  
 16 (Crosstalk)  
 17 MS. SEN: --she doesn't know.  
 18 MS. STEWART: I'm trying to clarify the  
 19 date, because maybe I can refresh her memory,  
 20 just like you asked my witness did you review the  
 21 IEP, was it in the last month, I'm asking a  
 22 clarified question.  
 23 MS. SEN: I think she said she--  
 24 HEARING OFFICER NOE: (Interposing) All  
 25 right. I'll overrule. If she has--if you can

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1 narrow it down. Did you hear the question?  
 2 MS. HIBBARD: Could you repeat the  
 3 question?  
 4 HEARING OFFICER NOE: Go ahead.  
 5 MS. STEWART: The question was, do you  
 6 know if that decision was made prior to your  
 7 observation in spring 2012?  
 8 MS. HIBBARD: I don't know.  
 9 MS. STEWART: Well, would you have  
 10 observed him in his classroom in preparation for  
 11 coming to your classroom if he was not  
 12 transferring to the Skills Program?  
 13 MS. HIBBARD: Yes, I observed several  
 14 classrooms that day in order to get an idea of  
 15 how the teachers were using routines and  
 16 accommodations in their classrooms.  
 17 MS. STEWART: Miss Hibbard, how is the  
 18 determination made that a student will be in the  
 19 Skills Program, if you know?  
 20 MS. HIBBARD: I don't know.  
 21 MS. STEWART: Do you know who would know  
 22 that information?  
 23 MS. HIBBARD: I could speculate.  
 24 HEARING OFFICER NOE: Don't speculate.  
 25 MS. SEN: Please don't speculate

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1 MS. HIBBARD: Okay. I won't speculate.

2 I don't know.

3 MS. STEWART: Miss Hibbard, the goals  
4 that you have for--first of all, Miss Hibbard,  
5 how many times have you testified this year?

6 MS. HIBBARD: Several times. I couldn't  
7 give you a number for sure.

8 MS. STEWART: Now the goals that you  
9 have, and I don't have a specific...

10 HEARING OFFICER NOE: If you're going  
11 to--we have to put it in evidence.

12 MS. STEWART: Okay.

13 HEARING OFFICER NOE: Is there an IEP  
14 that you're looking at?

15 MS. STEWART: The March 2013 Cooke  
16 Center Academy progress report.

17 HEARING OFFICER NOE: Wait a second.  
18 What...

19 MS. STEWART: Nineteen.

20 HEARING OFFICER NOE: Nineteen.

21 MS. STEWART: Yes.

22 HEARING OFFICER NOE: Any objection to  
23 19 going into evidence?

24 MS. SEN: No.

25 HEARING OFFICER NOE: Okay. 19 is in

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1 evidence.

2 (Whereupon, District Exhibit 19 was  
3 admitted into evidence.)

4 HEARING OFFICER NOE: So go ahead.

5 MS. STEWART: Miss Hibbard, how do you  
6 develop the content goals? Are those goals the  
7 same for all the students in your class?

8 MS. HIBBARD: Sorry. I'm just pulling  
9 up that progress report. The content goals...  
10 Okay. The content goals are not the same for  
11 every student. I develop those after observing  
12 the student in my classroom during the trimester,  
13 and I develop those--sorry. Let me clarify  
14 again. I'm sorry. I start out by writing my  
15 curriculum, and creating and generating goals and  
16 objectives that I want my students to be able to  
17 master, and that the program and the program  
18 coordinators want the students to be able to  
19 master by the end of the year. During the  
20 trimester, typically actually during the first  
21 two months, sometimes three months of the school  
22 year, after observing the student, examining all  
23 the reports on their functional levels and their  
24 abilities, I am able to differentiate these goals  
25 and objectives, that I've written for the

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1 students at the beginning of the year to better  
 2 fit their needs and to better meet them where  
 3 their skill level is, so to answer your question,  
 4 I develop the content goals on the progress  
 5 report for literacy and math, and they are  
 6 different for various students.

7 MS. STEWART: You don't pull the content  
 8 goals from a bank of goals that the Cooke Center  
 9 maintains?

10 MS. HIBBARD: There are some goals that  
 11 I have used from a Cooke bank, but most of the  
 12 goals I have been writing myself from a continuum  
 13 of goals that progressed from least challenging  
 14 to most challenging that I give to students, or  
 15 think are appropriate for students based on their  
 16 functional level.

17 MS. STEWART: Okay. Now you mentioned  
 18 that you teach him for math and literacy. Is  
 19 that correct?

20 MS. HIBBARD: Yes.

21 MS. STEWART: And how often are your  
 22 math and literacy classes?

23 MS. HIBBARD: I teach math and literacy  
 24 every day of the week, working week, and they are  
 25 55-minute periods.

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1 MS. STEWART: Okay. So he is with you  
 2 for two 55-minute periods?

3 MS. HIBBARD: Give me one moment to  
 4 confirm that.

5 MS. STEWART: Are you looking at  
 6 something?

7 MS. HIBBARD: Oh, I was going to  
 8 reference my attendance.

9 MS. STEWART: Okay. We don't have that  
 10 in evidence. Can you just testify based on your  
 11 memory?

12 MS. HIBBARD: Oh, sure. Sorry. Thank  
 13 you for checking on that. Yes. To the best of  
 14 my recollection, J [REDACTED] is in my class for--I  
 15 think it's in my affidavit, actually. Can I  
 16 reference that?

17 HEARING OFFICER NOE: Yes.

18 MS. STEWART: Yes, if it's in your  
 19 affidavit.

20 MS. SEN: It's paragraph five.

21 MS. HIBBARD: Yes. Let me see...

22 MS. STEWART: I don't even know. What's  
 23 her affidavit? What letter is it?

24 MS. HIBBARD: Oh, here we go. Yes.

25 Paragraph five--

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1 MS. STEWART: (Interposing) Oh, I.  
 2 MS. HIBBARD: --I wrote I spend two 55-  
 3 minute periods a day with J[REDACTED]. I see him four  
 4 times per week for math, and four times per week  
 5 for literacy. I also spend Wednesday--  
 6 (Papers Shuffling Near Mic)  
 7 MS. HIBBARD: --with him on community  
 8 trips.  
 9 MS. STEWART: Okay. I don't have any  
 10 other questions, Miss Hibbard.  
 11 HEARING OFFICER NOE: Do you have any  
 12 more questions?  
 13 (Background Conversation)  
 14 FEMALE VOICE: She wants to step to the  
 15 restroom.  
 16 HEARING OFFICER NOE: She can always  
 17 leave whenever she wants. I'm not keeping her  
 18 here. This... Okay? So do you have any more  
 19 questions?  
 20 MS. SEN: Yes.  
 21 HEARING OFFICER NOE: Okay. Go right  
 22 ahead.  
 23 MS. SEN: Can you describe the range of  
 24 functioning of students in J[REDACTED]'s math and  
 25 literacy classes?

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1 MS. HIBBARD: Yes.  
 2 MS. STEWART: I'm going to object to  
 3 that, as that's not--  
 4 HEARING OFFICER NOE: (Interposing) I'm  
 5 sorry. I did not hear the question.  
 6 MS. STEWART: Okay.  
 7 MS. SEN: The range of functioning--  
 8 (Crosstalk)  
 9 HEARING OFFICER NOE: What was your  
 10 question?  
 11 MS. SEN: Can you describe the range of  
 12 functioning of the students in J[REDACTED]'s math and  
 13 literacy classes?  
 14 MS. STEWART: I'm just objecting as  
 15 beyond the scope of my cross-examination.  
 16 HEARING OFFICER NOE: I'll overrule it.  
 17 Can you do that for us?  
 18 MS. HIBBARD: Yes. Could you repeat the  
 19 question one more time?  
 20 MS. SEN: Can you describe the range of  
 21 functioning of the students in J[REDACTED]'s math and  
 22 literacy classes?  
 23 MS. HIBBARD: Yes, I can. In J[REDACTED]'s  
 24 literacy class, all students are functioning at a  
 25 fourth grade level, either as an independent or

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1 instructional level, except for one student who  
 2 is functioning at an upper middle school level  
 3 independently, however, that student is  
 4 functioning on a fourth grade level in terms of  
 5 acquiring new vocabulary, so that student is able  
 6 to be at peer - - and work with the rest of the  
 7 group well and effectively . In math class, every  
 8 student is functioning on a fourth grade level.

9 MS. SEN: Okay. And do standardized  
 10 tests used by Cooke fully capture the skills  
 11 [REDACTED] has learned this year?

12 MS. HIBBARD: No, they do not.

13 MS. SEN: And can you explain why not?

14 MS. STEWART: I'm going to object to  
 15 that, as beyond the scope of my cross-  
 16 examination.

17 HEARING OFFICER NOE: Yeah. Where--is  
 18 that in her affidavit?

19 MS. SEN: No, but see... When we had to  
 20 submit the affidavit so far ahead of time, I got  
 21 her affidavits the night before I had to submit  
 22 mine, and so--and I just got her opening  
 23 statement on Monday, and so I didn't have an  
 24 opportunity to know--

25 HEARING OFFICER NOE: (Interposing) But

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1 do you have a document that maybe we could put  
 2 into evidence that then you can ask her a  
 3 question about--

4 MS. SEN: (Interposing) Yes.

5 HEARING OFFICER NOE: --because it seems  
 6 to be that you're saying that I didn't know this  
 7 information, because a document just came--

8 MS. SEN: (Interposing) The DOE's  
 9 opening statement.

10 HEARING OFFICER NOE: Well, opening  
 11 statement is not a document--

12 MS. STEWART: (Interposing) An opening  
 13 statement is not evidence.

14 HEARING OFFICER NOE: --necessarily.  
 15 It's not documentary evidence--

16 (Crosstalk)

17 HEARING OFFICER NOE: It's just whatever  
 18 her words are.

19 MS. SEN: But if we hadn't been using  
 20 the affidavit scheme, I would have heard the  
 21 opening statement before I asked my original  
 22 directs--

23 HEARING OFFICER NOE: (Interposing) But  
 24 whatever she says in her opening statement is not  
 25 documentary evidence, right?

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1 MS. SEN: I had no way to know she would  
2 be making that argument until she submitted her  
3 evidence, and--

4 MS. STEWART: (Interposing) Can we put  
5 the witness on hold, just so she doesn't hear--

6 MS. STEWART: (Interposing) But there's  
7 - - evidence that--

8 (Crosstalk)

9 HEARING OFFICER NOE: Yeah, well let's  
10 see if you got any documentary evidence you want  
11 to put in.

12 MS. SEN: The DOE is submitting Number  
13 14, the--

14 (Crosstalk)

15 HEARING OFFICER NOE: Okay. 14, and  
16 there's no objection by--Cooke Center assessment  
17 portfolio S [REDACTED], right? And you have no  
18 objection to that going into evidence.

19 MS. SEN: No, but I would like to be  
20 able to address it.

21 HEARING OFFICER NOE: Yeah, so take it.  
22 Now you got it. It's in evidence.

23 (Whereupon, District Exhibit 14 was  
24 admitted into evidence.)

25 MS. STEWART: Well, then my objection

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1 would be that I was doing my cross based on  
2 what's in the witness's affidavit. I didn't know  
3 that the witness would be addressing standardized  
4 test reports. If she's going to be addressing  
5 standardized tests reports, I would have  
6 addressed it on cross.

7 MS. SEN: But you can--

8 HEARING OFFICER NOE: (Interposing)  
9 Well, you can recross, and if these are actually  
10 this student's standardized tests, which you are  
11 familiar with, let's get it out, okay? So go  
12 ahead. You have it in evidence.

13 MS. SEN: So Miss Hibbard, can you  
14 explain? You said that the standardized tests  
15 used by Cooke do not fully capture the skills  
16 J [REDACTED] has done this year. Can you explain why  
17 not?

18 MS. STEWART: I'm going to object just  
19 to the form of that question, because she didn't  
20 say the standardized tests used by Cooke do not  
21 fully capture.

22 MS. SEN: She did. I--I'll ask the  
23 first question again. Let me start over. Miss  
24 Hibbard, do the standardized tests used by Cooke  
25 fully capture the skills J [REDACTED] has learned this

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1 year?

2 MS. HIBBARD: No, they don't.

3 MS. SEN: Can you explain why not?

4 MS. HIBBARD: Yes, I can, and will  
5 elaborate on what - - affidavit in paragraph 20.  
6 It says--I just draw your attention to the  
7 section in the affidavit that says in addition to  
8 the academic progress noted in this progress  
9 report, there are areas of notable progress for  
10 J [REDACTED], and I think these touch on some of the  
11 areas that he's shown a lot of progress in.  
12 There are significant increases in progress. His  
13 sense of self-awareness and purpose is something  
14 I mention, and by that I mean he is, as a writer,  
15 he is more aware of the work that he is  
16 producing. He now re-reads his work and self-  
17 edits his work, which is something he was not  
18 doing at the beginning of this school year, and  
19 he also writes with an awareness of who his  
20 audience is. For example, when he first came to  
21 Skills, he would write the same thing, no matter  
22 whether he was writing to an employer, a  
23 supervisor, a friend, his parents, it would be  
24 the same thing, but now he is able to change his  
25 response--I'm sorry--change his writing style

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1 with sensitivity towards who he is writing to,  
2 which is an important part of self-awareness and  
3 awareness of audience. He is also able to write  
4 now with a purpose, and by that I mean that he  
5 write with a reason for writing. He will not--  
6 more than just being told to write and then  
7 writing, he'll identify that he should send an e-  
8 mail, or he should write this down, and then he  
9 knows why he is writing e-mail, or he'll know why  
10 he's writing a note in the margins of a document  
11 at work, or he'll know why he is writing down a  
12 short summary after reading a paragraph in a non-  
13 fiction book. He'll say, because I need this  
14 person's attention, or he'll say it's because I  
15 don't want to forget this, or it's because I  
16 think this will help me understand better, which  
17 is huge progress towards J [REDACTED] being an  
18 independent reader who is making accommodations  
19 for himself as someone with special needs.  
20 Another point that I mention in the affidavit is  
21 his ability to advocate for his needs in a formal  
22 and informal social setting. So J [REDACTED] has--you  
23 can see in the evidence submitted--

24 MS. STEWART: (Interposing) I'm going to  
25 object to--

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1 MS. HIBBARD: --that he has--

2 (Crosstalk)

3 MS. STEWART: --her answer as non-  
4 responsive. She's just reading the affidavit.

5 FEMALE VOICE: Yeah.

6 MS. SEN: Okay. Miss Hibbard, can you  
7 speak to J■■■■'s math skills, and whether or not  
8 his standardized tests speak to the math skills  
9 that he may or may not have...

10 HEARING OFFICER NOE: Well, what do the-

11 -

12 (Background Conversation)

13 MS. STEWART: Right. And I was going to  
14 object to that, because the report that I have  
15 doesn't actually have standardized test scores  
16 from the period that Miss Hibbard has been  
17 working with him, so she hasn't actually  
18 testified that she knows what his standardized  
19 test scores are.

20 HEARING OFFICER NOE: Well, did she take  
21 these--did she give--did he take these tests  
22 while he was in her class?

23 MS. STEWART: I'm not actually sure if  
24 she took them--

25 HEARING OFFICER NOE: (Interposing)

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1 Well, why don't you ask her? Date taken, - -  
2 math, I would imagine that's what we're talking  
3 about, right?

4 MS. SEN: No. - - before her class.

5 HEARING OFFICER NOE: Okay. So how is  
6 she going--what's the question?

7 MS. SEN: So the question is whether or  
8 not the standardized tests can accurately measure  
9 J■■■■'s academic skills. Miss Hibbard, can  
10 standardized tests that J■■■■ takes at Cooke  
11 accurately measure his academic skills and his  
12 academic growth?

13 MS. HIBBARD: I don't believe so, and I  
14 can explain why. If you look at some of the  
15 requirements for fourth and fifth grade level  
16 skills in terms of reading, for example, fourth  
17 and fifth grade--well, fourth, certainly and  
18 fifth grade absolutely require things like  
19 analytical skills, analytical skills being  
20 identifying similarities and differences between  
21 characters or events, making sense of reoccurring  
22 patterns. In math, you have to be able to notice  
23 a pattern that happens over and over again in  
24 data charts, and in literacy at a fourth and  
25 fifth grade level, you have to use knowledge of

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1 character actions, of character motivations,  
 2 character feelings, and character--like physical  
 3 attributes of characters to determine character  
 4 traits, and because J [REDACTED] is really challenged by  
 5 recall, he really struggles to hold facts in his  
 6 head, he struggles to remember vocabulary needed  
 7 to describe what he's seeing, he really struggles  
 8 with the verbal use of general--he might never be  
 9 able to produce some of the criteria that  
 10 standardized tests require to show mastery of  
 11 fourth and fifth grade level, however, he is able  
 12 to show some skills at a fourth or fifth grade  
 13 level. For example, he is able to, you know,  
 14 identify and write with a purpose at a fourth  
 15 grade level, he's able to answer explicit  
 16 questions that involve fourth grade or fifth  
 17 grade level vocabulary, and that's because he's  
 18 studied and he's worked hard to master these  
 19 skills, but you know, in some ways the questions  
 20 on some standardized tests, while J [REDACTED] might not  
 21 ever be able to show full mastery of certain  
 22 areas, so he--it's sort of like for J [REDACTED],  
 23 there's a lot of different skills that the  
 24 standardized--that tests assess for, and he's  
 25 mastered some, but not all of them, so it just

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1 seems that he might not--and I emphasize might,  
 2 because anything's possible, but he might not be  
 3 able to show the skills that he has mastered on  
 4 standardized tests.

5 MS. SEN: Okay. So can you explain what  
 6 the point is of academic instruction for J [REDACTED]  
 7 right now?

8 MS. HIBBARD: Yeah. The point of  
 9 academic instruction is to take the academic  
 10 skills that he has mastered. You know, he is  
 11 functioning at fourth grade level in literacy and  
 12 math to take--to meet him where he's at, to take  
 13 those skills and help him apply those academic  
 14 skills in the community that he lives in, in the  
 15 work environment that he will be transitioning  
 16 into, and into his home and social life, the idea  
 17 is that, you know, our students are bright and  
 18 intelligent people who use the skills that they  
 19 have--the academic skills, social skills, all  
 20 those skills that they have to be successful in  
 21 the real world.

22 MS. SEN: Thank you. I have--actually,  
 23 I want to address one other document in evidence--  
 24 -

25 HEARING OFFICER NOE: (Interposing)

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1           Okay. Go ahead. Before we leave there, I just  
 2           have one questions for you. Do you know what Q-  
 3           R-I means?  
 4                   MS. HIBBARD: Yes, I do.  
 5                   HEARING OFFICER NOE: What does that  
 6           mean?  
 7                   MS. HIBBARD: Qualitative Reading  
 8           Inventory.  
 9                   HEARING OFFICER NOE: Okay. What  
 10          document do you want to put in evidence?  
 11                  MS. SEN: Well, I don't want to put it  
 12          in evidence. It's the DOE's skills program  
 13          description.  
 14                  HEARING OFFICER NOE: Which number is  
 15          that?  
 16                  MS. STEWART: It's one of the later  
 17          ones. 25. I have it marked as 25.  
 18                  (Crosstalk)  
 19                  MS. SEN: The one I'm objecting to is 23  
 20          and 24.  
 21                  HEARING OFFICER NOE: Oh, I thought you  
 22          said... Okay. So the DOE is offering into  
 23          evidence the Cooke Center Academy Skills Program  
 24          description, five pages. And there's no  
 25          objection?

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1           MS. SEN: No objection.  
 2           HEARING OFFICER NOE: Okay.  
 3                   (Whereupon, District Exhibit 25 was  
 4          admitted into evidence.)  
 5           HEARING OFFICER NOE: So then--  
 6                   (Crosstalk)  
 7           HEARING OFFICER NOE: --you want to ask  
 8          her a question about that?  
 9           MS. SEN: Miss Hibbard, have you read  
 10          the Skills Program description?  
 11                  MS. HIBBARD: Yes.  
 12                  MS. SEN: Okay. And do you know who  
 13          wrote the Skills Program description?  
 14                  MS. HIBBARD: No.  
 15                  MS. SEN: Is the student-to-teacher  
 16          ratio 12:1:1 listed on page one an accurate  
 17          characterization of the program?  
 18                  MS. HIBBARD: No.  
 19                  MS. SEN: Okay. Thank you. That's all.  
 20                  HEARING OFFICER NOE: Any other  
 21          additional questions?  
 22                  MS. STEWART: I do. Miss Hibbard, you  
 23          said that at the beginning--well, you said that  
 24          J ■■■ is functioning at the fourth grade level in  
 25          ELA and math, correct?

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1 MS. HIBBARD: Yes. That's according to  
2 my teacher observations.

3 MS. STEWART: Okay. And is that where  
4 he is functioning now or was it--

5 MS. HIBBARD: (Interposing) I'm not  
6 able to look at my most recent teacher  
7 observation data, but to the best of my  
8 knowledge, he is functioning at approximately a  
9 fourth grade level in--as an instructional level  
10 in literacy, and he is functioning at a fourth  
11 grade level in terms of fractions and decimals in  
12 math.

13 MS. STEWART: Okay. Do you know where  
14 he was functioning at the beginning of the year?

15 MS. HIBBARD: I believe he was  
16 functioning at a 3.1 level, according to the  
17 grade, which is a reading assessment, and a 3--  
18 I'm not sure about the math. I think he was  
19 functioning at about a high third grade level  
20 when he entered into the program, according to  
21 the GMADE, the math assessment.

22 MS. STEWART: GMADE, the math  
23 assessment... Now do you know whether or not we  
24 have--I'm not sure if we moved Exhibit 14 into  
25 evidence already.

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1 HEARING OFFICER NOE: No, but we can  
2 move it in. Any objection, 14?

3 MS. STEWART: No, we did. We moved it  
4 in.

5 HEARING OFFICER NOE: Did we?

6 MS. SEN: Because that's what I just--

7 HEARING OFFICER NOE: (Interposing) Oh,  
8 that's right. She was--that's what she was just--  
9 -

10 MS. STEWART: (Interposing) I know she  
11 asked her about it. I wasn't sure if she moved  
12 it in.

13 (Crosstalk)

14 HEARING OFFICER NOE: Yeah. No, no, no.

15 MS. STEWART: Okay. We have in evidence  
16 as Exhibit 14 his student assessment portfolio.  
17 Have you ever seen that sort of document? It  
18 contains a grade level reading inventory, the--

19 MS. HIBBARD: (Interposing) Oh, yes,  
20 yes. Thank you. Yes, I have.

21 MS. STEWART: The GMADE, Star math, and  
22 best estimate chart?

23 MS. HIBBARD: Yes.

24 MS. STEWART: And have you reviewed  
25 those scores in that...

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1 MS. HIBBARD: Yes, I have.

2 MS. STEWART: And now do you know if  
3 those scores--do you know if those scores are  
4 inaccurate for [REDACTED]?

5 MS. HIBBARD: I would say that they are  
6 not a full representation of his abilities and  
7 skills, so with that said, then yes, these are an  
8 inaccurate representation of his abilities and  
9 skills.

10 MS. STEWART: Okay. So it's your  
11 testimony that these scores are inaccurate? Miss  
12 Hibbard?

13 MS. HIBBARD: Sorry. I believe that  
14 these are accurate as so far as they assess his  
15 math and literacy functioning levels, however, I  
16 have mentioned in this testimony that there are  
17 other skills that define his literacy and math  
18 skills that are not assessed by the GMADE and the  
19 grade.

20 MS. STEWART: Okay. Now we also have in  
21 evidence, aside from the GMADE and the Gray  
22 (phonetic) Score history, we also have leveled  
23 reading assessments. Do you know what that is?

24 MS. HIBBARD: Leveled reading  
25 assessment... I'm not sure what you're talking

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1 about.

2 MS. STEWART: Okay. So how do you use  
3 the standardized test scores at Cooke?

4 MS. HIBBARD: When the student first  
5 come into my classroom, I have pre-read their  
6 standardized academic scores, and I use that to  
7 decide which or what grade level to start my  
8 formative assessments on.

9 MS. STEWART: Okay. I don't have  
10 anything else, Miss Hibbard.

11 HEARING OFFICER NOE: Anything else?  
12 Thank you for your testimony.

13 MS. HIBBARD: Thank you.

14 HEARING OFFICER NOE: Okay. Do you want  
15 to call your witness, see if you can get them on  
16 the phone?

17 MS. STEWART: What time is it? 1:09?

18 HEARING OFFICER NOE: 1:09.

19 MS. STEWART: All right, but...

20 HEARING OFFICER NOE: But you think it's  
21 only at two?

22 MS. STEWART: She has an IEP meeting at  
23 one, so unless that person did not show up, she  
24 is not going to be available, but--

25 HEARING OFFICER NOE: (Interposing) I

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1 see. All right. Do you want to call another  
 2 witness?  
 3 MS. STEWART: I could try her.  
 4 MS. SEN: Yeah, I can keep...  
 5 HEARING OFFICER NOE: You could keep  
 6 going? What I want to ask you both is if we can-  
 7 -because I doubt we're going to get through and  
 8 I've got a Russian interpreter that's nowhere  
 9 near the quality of this interpreter, and I don't  
 10 want to let go of her, because I've done this  
 11 four times now with this Russian, different  
 12 Russian interpreters. May 29<sup>th</sup> at 9 a.m.? She's  
 13 okay.  
 14 MS. STEWART: I'm not available. I'm  
 15 actually on vacation that entire week.  
 16 HEARING OFFICER NOE: Okay. What is  
 17 your availability after that?  
 18 MS. STEWART: June 3<sup>rd</sup> and June 4<sup>th</sup> I also  
 19 have hearings. I have June 3<sup>rd</sup>--the first day I  
 20 come back from vacation June 4<sup>th</sup>, I also have a  
 21 second hearing, so I believe I am available the  
 22 5<sup>th</sup>, 6<sup>th</sup>, and the 7<sup>th</sup>, but--  
 23 HEARING OFFICER NOE: (Interposing) And  
 24 what about a date next--  
 25 MS. STEWART: (Interposing) --check my

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1 calendar.  
 2 HEARING OFFICER NOE: --possibly... Today  
 3 is the 16<sup>th</sup>. What about a date next week?  
 4 MS. STEWART: I can do any day next  
 5 week, except Thursday.  
 6 MS. SEN: I am only available on Friday.  
 7 HEARING OFFICER NOE: I don't know.  
 8 You're available on Friday as well?  
 9 MS. STEWART: Yes.  
 10 HEARING OFFICER NOE: That's the 24<sup>th</sup>?  
 11 Can we put this--is that--you're available on  
 12 Friday? Can we put this on for the 24<sup>th</sup> at 1:00?  
 13 MS. STEWART: Okay.  
 14 MS. SEN: Okay.  
 15 HEARING OFFICER NOE: Does that work for  
 16 both of you?  
 17 MS. STEWART: Yes.  
 18 HEARING OFFICER NOE: Okay. So now what  
 19 should we do? Should we go forward?  
 20 (Background Conversation)  
 21 MS. SEN: Oh, right.  
 22 HEARING OFFICER NOE: That's the  
 23 Memorial Day Weekend?  
 24 MS. SEN: The school might--yeah. I  
 25 don't have a school calendar with me.

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1 HEARING OFFICER NOE: Do you want to  
 2 check?  
 3 MS. STEWART: Well, the schools should  
 4 be closed the Monday, because the Monday is the  
 5 holiday, but I don't know if--  
 6 (Crosstalk)  
 7 HEARING OFFICER NOE: Monday's the  
 8 holiday.  
 9 MS. STEWART: --if they're leaving early  
 10 on Friday.  
 11 MS. SEN: In June, they have so many  
 12 things going on.  
 13 HEARING OFFICER NOE: No, no. This May.  
 14 May 24<sup>th</sup>.  
 15 MS. SEN: Oh, right.  
 16 HEARING OFFICER NOE: It's the Friday  
 17 before Memorial Day Weekend.  
 18 MS. SEN: Mary McDowell's closed. I can  
 19 call someone and see--  
 20 HEARING OFFICER NOE: (Interposing) Why  
 21 don't you call and see if you could find out?  
 22 Because then, you know, then we've got to really--  
 23 -she's on vacation the next week, and then June,  
 24 and... Could you see if you can find out?  
 25 MS. SEN: Yeah. Just called someone - -

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1 . You know what? One of my witnesses is never  
 2 available on Fridays.  
 3 (Background Conversation)  
 4 HEARING OFFICER NOE: Okay.  
 5 MS. SEN: I just tried to call her and  
 6 remembered she is never available on Fridays,  
 7 anyway.  
 8 HEARING OFFICER NOE: How about June 6<sup>th</sup>?  
 9 MS. SEN: Yeah. The student has an IEP  
 10 meeting on June 6<sup>th</sup>. June 5<sup>th</sup>?  
 11 HEARING OFFICER NOE: June 5<sup>th</sup>, I can't  
 12 do.  
 13 MS. SEN: How about June 7<sup>th</sup>?  
 14 HEARING OFFICER NOE: June 7<sup>th</sup> I could  
 15 do, but you said your witness is never available  
 16 on Friday.  
 17 MS. SEN: Right.  
 18 HEARING OFFICER NOE: Can't they put the  
 19 IEP over for another day?  
 20 MS. STEWART: Probably not. They're...  
 21 HEARING OFFICER NOE: But how long--  
 22 MS. STEWART: (Interposing) The IEP  
 23 meeting probably won't last all day, but--  
 24 HEARING OFFICER NOE: (Interposing)  
 25 Yeah, how long does the IEP meeting take?

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1 MS. SEN: What time is the IEP meeting?  
 2 MS. M [REDACTED] (THROUGH INTERPRETER): I  
 3 don't remember, but it's in the morning, early.  
 4 HEARING OFFICER NOE: It's in the  
 5 morning early, so why can't we meet in the  
 6 afternoon?  
 7 (Crosstalk)  
 8 HEARING OFFICER NOE: Okay? You'll let  
 9 us know?  
 10 MS. SEN: Okay. Yes.  
 11 MS. STEWART: June 6<sup>th</sup> is Thursday?  
 12 MS. SEN: I'll confirm that.  
 13 HEARING OFFICER NOE: June 6<sup>th</sup> is  
 14 Thursday. 6/6, and what I'm going to say right  
 15 now is 12, but you're going to call me and let me  
 16 know or e-mail me, all right?  
 17 MS. SEN: Yeah.  
 18 MS. STEWART: Is there any way I can  
 19 just check, log online just to make sure I don't  
 20 have a hearing that day? I know I have one the  
 21 Monday and Tuesday--  
 22 HEARING OFFICER NOE: (Interposing) Go  
 23 ahead.  
 24 MS. STEWART: --and I don't think I have  
 25 one on the 6<sup>th</sup>.

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1 HEARING OFFICER NOE: It will be helpful  
 2 if you let us know.  
 3 HEARING REPORTER: Do you still need to  
 4 be on record or--  
 5 HEARING OFFICER NOE: (Interposing) You  
 6 could go off the record.  
 7 HEARING OFFICER NOE: Hello. Can you  
 8 hear us?  
 9 MS. EVELYN ALVAREZ: Yes, I can.  
 10 HEARING OFFICER NOE: Good. My name is  
 11 Mary Noe. I'm the Hearing Officer, and we are  
 12 here in an impartial hearing for J [REDACTED] S [REDACTED].  
 13 Do you swear or affirm to tell the truth?  
 14 MS. ALVAREZ: Yes, I do.  
 15 HEARING OFFICER NOE: State your name  
 16 and whatever position you hold.  
 17 MS. ALVAREZ: Evelyn Alvarez, special ed  
 18 teacher, assigned.  
 19 HEARING OFFICER NOE: Special ed teacher  
 20 what?  
 21 MS. ALVAREZ: Assigned.  
 22 HEARING OFFICER NOE: Okay. You don't  
 23 have the phone on speaker phone, do you?  
 24 MS. ALVAREZ: Yes, I did.  
 25 HEARING OFFICER NOE: You should take it

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1 off speaker phone.

2 MS. ALVAREZ: Okay. So I'm Evelyn

3 Alvarez, the special ed teacher assigned.

4 MS. STEWART: Okay. Can you raise the

5 volume on your side?

6 HEARING OFFICER NOE: Well, she can't--

7 (Crosstalk)

8 HEARING OFFICER NOE: Yeah, that's a

9 hand set. We're going to need you then to shout,

10 okay?

11 MS. ALVAREZ: Okay.

12 HEARING OFFICER NOE: That's good. Just

13 keep your voice up. Go ahead. Do you want to get

14 this affidavit in?

15 MS. STEWART: Okay. The DOE has Miss

16 Alvarez affidavit right now marked as Exhibit 22,

17 and would like to move it into evidence as her

18 direct testimony.

19 HEARING OFFICER NOE: Miss Alvarez, did

20 you see this affidavit?

21 MS. ALVAREZ: Yes, I did.

22 HEARING OFFICER NOE: Do you swear that

23 this affidavit is accurate when it was written,

24 and it's accurate today?

25 MS. ALVAREZ: Correct. Yes.

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1 HEARING OFFICER NOE: Okay. Any

2 objection?

3 MS. SEN: No.

4 HEARING OFFICER NOE: That's 21 in

5 evidence. You got to scream, okay, Miss Alvarez?

6 MS. ALVAREZ: Yes, ma'am.

7 MS. STEWART: That is 22.

8 HEARING OFFICER NOE: It's 22--

9 MS. STEWART: (Interposing) Affidavit of

10 Alvarez is--

11 HEARING OFFICER NOE: (Interposing) I'm

12 sorry. Right. It's 22. Thank you. 22 in

13 evidence.

14 (Whereupon, District Exhibit 22 was

15 admitted into evidence.)

16 HEARING OFFICER NOE: We have some

17 questions here from the Parent's attorney.

18 MS. SEN: Okay. Miss Alvarez, your

19 affidavit states that the attendees at J■■■■'s

20 annual review on May 22<sup>nd</sup> 2012 were you, DOE

21 psychologist Aminah Lucio (phonetic), Cooke

22 Center representative Sally Ord, Cooke Center

23 teacher, Beth Sullivan, and J■■■■'s Mother, Miss

24 M■■■■. Is that correct?

25 MS. ALVAREZ: Correct.

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1 MS. SEN: And you state in your  
 2 affidavit that the team recommended a 12:1:1  
 3 classroom in District 75 placement, correct?  
 4 MS. ALVAREZ: Correct.  
 5 MS. SEN: And when you say the team, who  
 6 did you mean?  
 7 MS. ALVAREZ: Everyone that was present.  
 8 MS. SEN: So you're saying that--  
 9 MS. ALVAREZ: (Interposing) - - everyone  
 10 that was present, me and the psychologist.  
 11 MS. SEN: Okay. So you and the  
 12 psychologist recommended a 12:1:1 classroom in a  
 13 D. 75 placement?  
 14 MS. ALVAREZ: Correct.  
 15 MS. SEN: Okay. So it wasn't a  
 16 consensus.  
 17 MS. ALVAREZ: No.  
 18 MS. SEN: Okay. So under this IEP, this  
 19 May 22<sup>nd</sup>, 2012 IEP, can J [REDACTED] be placed in a part  
 20 time vocational program?  
 21 MS. ALVAREZ: Could he be placed in a...  
 22 MS. SEN: Yes. Would this--  
 23 (Crosstalk)  
 24 MS. SEN: Could he be? Would this IEP  
 25 allow him to be placed a part time vocational

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1 program?  
 2 MS. ALVAREZ: He could be involved in a  
 3 school that provided skills--vocational skills.  
 4 MS. SEN: Okay. And under this IEP,  
 5 could he be placed in a vocational program that  
 6 is full time, a full-day work site?  
 7 MS. ALVAREZ: I think he would benefit  
 8 from both.  
 9 MS. SEN: Okay. But what I'm asking is  
 10 not what J [REDACTED] would benefit from, but what the  
 11 IEP would allow.  
 12 MS. ALVAREZ: In a 12:1:1, he would get  
 13 both, academic and vocational.  
 14 MS. SEN: Okay. So could the IEP be  
 15 properly implemented if he was at a work site  
 16 where he spent only an hour or two of the day  
 17 doing academics?  
 18 MS. ALVAREZ: Yeah, if they were  
 19 teaching life skills.  
 20 MS. SEN: Okay. Sorry. So what I'm  
 21 asking you is, does the IEP specify the amount of  
 22 time that J [REDACTED] should spend working on academic  
 23 skills versus vocational training?  
 24 MS. ALVAREZ: I don't think an IEP can  
 25 do that.

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1 MS. SEN: Okay. So it does not specify.  
 2 MS. ALVAREZ: Absolutely not. No.  
 3 MS. SEN: Okay.  
 4 HEARING OFFICER NOE: You got to scream,  
 5 okay?  
 6 MS. ALVAREZ: Okay.  
 7 HEARING OFFICER NOE: Thank you.  
 8 MS. SEN: So the IEP wouldn't inform the  
 9 parent how much of her child's time would be  
 10 spent in vocational versus academic skills  
 11 acquisition?  
 12 MS. ALVAREZ: The school the child was  
 13 placed in would provide that information.  
 14 MS. SEN: Okay.  
 15 HEARING OFFICER NOE: I--yeah. You  
 16 really, really have to--I understand it's  
 17 difficult, but you got to scream. You're a  
 18 school teacher, right?  
 19 MS. ALVAREZ: Yes, I am.  
 20 HEARING OFFICER NOE: So then you should  
 21 know how to scream.  
 22 MS. ALVAREZ: I don't scream.  
 23 HEARING OFFICER NOE: Well, it's not a  
 24 bad idea. It's called, you know, cranking up the  
 25 volume, okay?

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1 MS. ALVAREZ: Okay. Could you hear me  
 2 now?  
 3 HEARING OFFICER NOE: We can.  
 4 MS. ALVAREZ: Okay.  
 5 MS. SEN: Could you repeat your last  
 6 answer, please?  
 7 MS. ALVAREZ: I forgot what I said.  
 8 MS. SEN: I believe you said that a  
 9 school placement would provide--  
 10 MS. ALVAREZ: (Interposing) Right. So  
 11 once the child's at the school, you know, then  
 12 the parent would know what's going on.  
 13 MS. SEN: Okay. But before a child  
 14 enrolled in a school, the parent wouldn't know  
 15 what her child's educational program would be.  
 16 (Crosstalk)  
 17 MS. ALVAREZ: --the IEP, it's--you know,  
 18 it's telling you what they would cover, what  
 19 vocational skills would be covered.  
 20 MS. SEN: But it wouldn't tell the  
 21 parent how much time would be spent--  
 22 MS. ALVAREZ: (Interposing) How many  
 23 hours? No.  
 24 MS. SEN: Okay. And--  
 25 MS. ALVAREZ: (Interposing) Even the

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1 cognitive skills don't tell you how much hours,  
 2 or how much time is spent on reading or writing  
 3 or--it just says what - - should be covered.  
 4 MS. SEN: Thank you, Miss Alvarez. In  
 5 paragraph 27 of your affidavit, you stated that  
 6 Miss Ord reported that J [REDACTED] was in a math class  
 7 with a 12:1:1 student-to-teacher ratio. Is it  
 8 your testimony that Miss Ord told you that J [REDACTED]  
 9 was in a math class with 12 students, a teacher,  
 10 and a paraprofessional?  
 11 MS. ALVAREZ: Yes. There's a sound on  
 12 your end of the phone.  
 13 MS. SEN: Well, there's a translator.  
 14 MS. ALVAREZ: Okay. Now I can--yes.  
 15 MS. SEN: So you told me that she told  
 16 you that there were 12 students, a teacher, and a  
 17 paraprofessional.  
 18 MS. ALVAREZ: Yes. That's what she  
 19 stated.  
 20 MS. SEN: So she did not tell you,  
 21 you're saying, that there are 12 students, a  
 22 teacher, and an assistant teacher?  
 23 MS. ALVAREZ: Say that again?  
 24 MS. SEN: You're saying that she did not  
 25 tell you that there were 12 students, a teacher,

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1 and an assistant teacher.  
 2 MS. ALVAREZ: That's a 12:1:1.  
 3 MS. SEN: Okay. So are you saying that  
 4 to you, a paraprofessional is the same as an  
 5 assistant teacher?  
 6 MS. ALVAREZ: It's a 12:1:1, a para.  
 7 MS. SEN: I am asking you what Miss Ord  
 8 told you. Do you remember what Miss Ord told you  
 9 in the meeting or--  
 10 MS. ALVAREZ: (Interposing) - - is a  
 11 12:1:1. 12--  
 12 HEARING OFFICER NOE: (Interposing) You  
 13 got to keep your--we can't hear you.  
 14 MS. ALVAREZ: There's 12 teachers, one  
 15 student, and a para.  
 16 MS. SEN: Okay. Are you aware that in  
 17 Cooke's classes with 12 students, they have a  
 18 head teacher and an assistant teacher?  
 19 MS. ALVAREZ: Unless they tell us  
 20 otherwise--  
 21 HEARING OFFICER NOE: (Interposing) Tell  
 22 us what?  
 23 (Crosstalk)  
 24 MS. ALVAREZ: Unless they tell us  
 25 otherwise--

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1 (Crosstalk)  
 2 MS. ALVAREZ: --an assistant--  
 3 (Crosstalk)  
 4 HEARING OFFICER NOE: I can't hear a  
 5 thing--  
 6 MS. STEWART: Miss Alvarez?  
 7 HEARING OFFICER NOE: The phone is--  
 8 (Coughing)  
 9 (Crosstalk)  
 10 MS. STEWART: I'm sorry. This is  
 11 Brittanina. We are having a--you're coming across  
 12 like in a whisper. Is there another room that  
 13 may have a better phone?  
 14 MS. ALVAREZ: Yeah, okay. I'll try.  
 15 MS. STEWART: Will that be okay, because  
 16 I--  
 17 HEARING OFFICER NOE: (Interposing)  
 18 Sure. Hang up and call us again? Is that what  
 19 she's going to do?  
 20 MS. SEN: I can't hear anything she's  
 21 saying.  
 22 HEARING OFFICER NOE: I can't hear--  
 23 MS. STEWART: (Interposing) Yeah, she's  
 24 going to try and find another room.  
 25 HEARING OFFICER NOE: Okay. Let's go

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1 off the record.  
 2 (OFF THE RECORD)  
 3 (ON THE RECORD)  
 4 MS. SEN: So, Miss Alvarez, we were  
 5 talking about--  
 6 MS. ALVAREZ: (Interposing) A 12:1:1.  
 7 MS. SEN: Right. And so what I am  
 8 asking you is, you said in your affidavit that  
 9 you had over 100 meetings with Miss Ord. Is that  
 10 correct?  
 11 MS. ALVAREZ: Yes.  
 12 MS. SEN: And has Miss Ord ever  
 13 explained to you that Cooke has assistant  
 14 teachers and head teachers in its classroom--  
 15 MS. ALVAREZ: (Interposing) Is this  
 16 teacher certified or--if it's not certified, a  
 17 12:1:1, a para?  
 18 MS. SEN: I'm not asking you to  
 19 interpret Cooke's ratio. I'm asking you what  
 20 Miss Ord told you.  
 21 MS. ALVAREZ: I'm not sure. I don't  
 22 remember.  
 23 MS. SEN: Okay. So you don't even  
 24 remember if Miss Ord has told you that they have  
 25 assistant teachers instead of paraprofessionals.

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1 MS. ALVAREZ: I don't remember.

2 MS. SEN: Okay. And so you don't have  
3 any understanding of Cooke's assistant teacher  
4 role in the classroom?

5 MS. ALVAREZ: Not to my recollection.

6 MS. SEN: Okay.

7 MS. STEWART: I'm going to object to  
8 that question, just because we don't have any  
9 evidence about an assistant teacher role in the  
10 Cooke Center--

11 HEARING OFFICER NOE: (Interposing)  
12 Well, not only that, but she's a public school  
13 teacher. Why would she know what goes on in the  
14 Cooke Center?

15 MS. STEWART: Because she's had so many  
16 meetings with Cooke in which they discuss this.

17 HEARING OFFICER NOE: Okay. If she  
18 knows...

19 MS. SEN: Okay. Miss Alvarez?

20 MS. ALVAREZ: Yes.

21 MS. SEN: In the public schools, do  
22 special education paraprofessionals provide  
23 instruction--

24 MS. ALVAREZ: (Interposing) They assist  
25 with instruction.

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1 MS. SEN: They assist, but they do not  
2 provide instruction themselves. Is that correct?

3 MS. ALVAREZ: But they assist with  
4 instruction.

5 MS. SEN: Okay. But they do not provide  
6 instruction--can you please just answer the  
7 question--

8 MS. ALVAREZ: (Interposing) Yes. They  
9 don't.

10 MS. SEN: Okay. Thank you. They do not--  
11 you said they don't. Is that correct?

12 MS. ALVAREZ: Correct.

13 MS. SEN: Yes. Okay. And in paragraph  
14 29 of your affidavit, you stated that Miss  
15 Sullivan--you know what? I'm going to take that  
16 back. You state in paragraph 33 of your  
17 affidavit that the speech and language provider  
18 recommended that J [REDACTED] continue to receive three  
19 group sessions of speech and language therapy,  
20 and that the team recommended speech and language  
21 therapy in the exact amount J [REDACTED]'s speech and  
22 language therapist suggested. Is this correct?

23 HEARING OFFICER NOE: Hello?

24 MS. ALVAREZ: Hello. That's 33, you  
25 said?

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1 MS. SEN: Yes, paragraph 33.  
 2 MS. ALVAREZ: There's a really weird  
 3 noise coming from your end.  
 4 HEARING OFFICER NOE: It's the  
 5 interpreter.  
 6 MS. ALVAREZ: Okay.  
 7 HEARING OFFICER NOE: Keep your voice  
 8 up, okay? Did you hear the question?  
 9 MS. ALVAREZ: No, because it keeps on--  
 10 there's a sound on the phone that's interrupting  
 11 when she speaks.  
 12 HEARING OFFICER NOE: All right. Well,  
 13 here you go. Here's the question.  
 14 MS. ALVAREZ: Okay. That's better.  
 15 MS. SEN: You state in paragraph 33 of  
 16 your affidavit that the speech and language  
 17 provider recommended that J [REDACTED] continue to  
 18 receive three group sessions of speech and  
 19 language therapy, and then that the team  
 20 recommended speech and language therapy in the  
 21 exact amount J [REDACTED]'s speech and language  
 22 therapist suggested. Is this correct?  
 23 MS. ALVAREZ: Correct.  
 24 MS. SEN: Okay. And Miss Alvarez, what  
 25 is the speech and language recommendation in

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1 J [REDACTED]'s IEP?  
 2 HEARING OFFICER NOE: Do you know?  
 3 MS. ALVAREZ: I'm looking. Give me a  
 4 minute.  
 5 HEARING OFFICER NOE: Well, it's not in  
 6 evidence, is it?  
 7 MS. SEN: We can admit it into evidence.  
 8 HEARING OFFICER NOE: Yeah.  
 9 MS. STEWART: It's Exhibit 3, DOE's  
 10 Exhibit 3.  
 11 HEARING OFFICER NOE: Exhibit 3 in  
 12 evidence?  
 13 MS. STEWART: Not yet. Oh, sorry.  
 14 HEARING OFFICER NOE: She's not  
 15 objecting, right?  
 16 MS. STEWART: No.  
 17 (Crosstalk)  
 18 HEARING OFFICER NOE: Okay. So--  
 19 MS. ALVAREZ: (Interposing) Yes. It says  
 20 speech at 3 x 45.  
 21 HEARING OFFICER NOE: Okay.  
 22 (Whereupon, District Exhibit 3 was  
 23 admitted into evidence.)  
 24 MS. SEN: 3 x 45, and is that  
 25 individual, or how many... Or group service?

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1 MS. ALVAREZ: Oh, it says individual.  
 2 MS. SEN: Okay. And so--  
 3 MS. ALVAREZ: (Interposing) That  
 4 could've been just a typo.  
 5 MS. SEN: Okay. So you're testifying  
 6 that that's an error.  
 7 MS. ALVAREZ: Yeah, that's an error.  
 8 MS. SEN: Okay. And you intended to  
 9 write group.  
 10 MS. ALVAREZ: Yes.  
 11 MS. SEN: Okay. And--okay. And, Miss  
 12 Alvarez, when did you receive--you testified in  
 13 your affidavit that Miss Ord gave you a  
 14 transition document. When did you receive that  
 15 transition document?  
 16 MS. ALVAREZ: It's always a few days  
 17 before the actual meeting.  
 18 MS. SEN: Before the actual meeting.  
 19 MS. ALVAREZ: Before the actual meeting.  
 20 MS. SEN: Is it possible that she gave  
 21 it to you after the meeting?  
 22 MS. ALVAREZ: No.  
 23 MS. SEN: Okay. Is there anything  
 24 written in your meeting minutes about transition?  
 25 We're going to have to admit that, too.

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1 HEARING OFFICER NOE: Okay.  
 2 MS. ALVAREZ: No.  
 3 HEARING OFFICER NOE: What page is that?  
 4 MS. SEN: It's--  
 5 MS. STEWART: (Interposing) Exhibit 11.  
 6 HEARING OFFICER NOE: Eleven? And these  
 7 are the Department of Education's, so you have no  
 8 objection. Okay. So that's 11.  
 9 (Whereupon District Exhibit 11 was  
 10 admitted into evidence.)  
 11 MS. ALVAREZ: Eleven.  
 12 HEARING OFFICER NOE: Go ahead. Ask her  
 13 question.  
 14 MS. SEN: Okay. Is it possible that you  
 15 entered information from the transition document  
 16 into the IEP after the meeting?  
 17 MS. ALVAREZ: Yes.  
 18 MS. SEN: Okay.  
 19 MS. ALVAREZ: And that's only because  
 20 Sally speaks for it with the parent at the  
 21 meeting  
 22 MS. SEN: Okay. But then you enter it  
 23 after the meeting.  
 24 MS. ALVAREZ: Correct.  
 25 MS. SEN: Not during the meeting.

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1 MS. ALVAREZ: Just in case the opposes  
 2 to anything that's in it.  
 3 MS. SEN: Okay.  
 4 HEARING OFFICER NOE: You got to keep  
 5 your voice up.  
 6 MS. ALVAREZ: Just in case--I'm sorry--  
 7 just in case parent opposes to anything.  
 8 MS. SEN: But it's not written during  
 9 the meeting, you're saying.  
 10 MS. ALVAREZ: No.  
 11 MS. SEN: Okay. And so can you explain  
 12 why there's no responsibility listed for each  
 13 transition activity in the IEP?  
 14 HEARING OFFICER NOE: Can you answer  
 15 that question?  
 16 MS. ALVAREZ: Yes. Sally didn't provide  
 17 it.  
 18 HEARING OFFICER NOE: I don't know who  
 19 Sally is.  
 20 MS. ALVAREZ: Sally, Miss Ord.  
 21 MS. SEN: She's the Cooke Center  
 22 representative.  
 23 MS. ALVAREZ: Cooke's representative.  
 24 Right.  
 25 MS. SEN: Is it your testimony that it's

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1 the Cooke Center representative's responsibility  
 2 to write this IEP?  
 3 MS. ALVAREZ: No, it's not, but they  
 4 spend most of their time with the child, so they  
 5 know more than we do. They know the child, so  
 6 yes, so that part she overlooked so--and while  
 7 she was speaking to the parent there, the parent  
 8 did not object, so it's left as is.  
 9 MS. SEN: Okay. So your testifying it's  
 10 not your responsibility to ensure that the IEP is  
 11 complete?  
 12 MS. ALVAREZ: It's my responsibility to  
 13 amend the IEP as we speak in the meeting.  
 14 MS. SEN: Okay.  
 15 MS. ALVAREZ: So if the parent the  
 16 objected to that section being blank--  
 17 MS. SEN: (Interposing) You're also  
 18 testifying--  
 19 HEARING OFFICER NOE: (Interposing)  
 20 Wait, wait, wait. Let her finish.  
 21 MS. ALVAREZ: If the parent objected to  
 22 that part being omitted, she would have--that  
 23 would have been brought to the table, and we  
 24 would've amended it right there and then.  
 25 MS. SEN: But you're testifying that you

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1 wrote the transition items--

2 MS. ALVAREZ: (Interposing) I didn't  
3 write the--I didn't write the transition. The  
4 transition is done at the school, and we speak  
5 about it. At that point when the transition  
6 component is spoken about, Sally speaks for that  
7 transition component, as she speaks for the other  
8 components, too.

9 MS. SEN: Okay. But you just testified  
10 that you entered information--

11 MS. ALVAREZ: (Interposing) I enter it.  
12 Absolutely.

13 (Crosstalk)

14 MS. ALVAREZ: I enter the information  
15 that we discuss at the meeting, because I am the  
16 only--Sally can't the--Miss Ord is unable to.

17 MS. SEN: So you--but you entered it  
18 after the meeting.

19 MS. ALVAREZ: Absolutely. I have to see  
20 if anything needs to be amended, if things  
21 weren't--you know, if the parent objected to it.

22 MS. SEN: Okay. And your testimony is  
23 that Ms. Ord knows the student, and Cooke knows  
24 the student better than you, so she is a better  
25 person so determine what the student's program

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1 should be.

2 MS. ALVAREZ: I don't agree totally on  
3 that. I didn't say that.

4 MS. SEN: Okay.

5 MS. ALVAREZ: She represents the school.

6 MS. SEN: Okay.

7 MS. ALVAREZ: As a whole.

8 MS. SEN: Ms. Alvarez, your affidavit  
9 states in paragraph 12 that you reviewed several  
10 documents in order to refresh your recollection  
11 about the meeting. So is your testimony based  
12 part on your memory of the meeting, and part on  
13 what you read in those documents?

14 MS. ALVAREZ: On both.

15 MS. SEN: Okay. So you don't recall  
16 everything that happened in the meeting.

17 MS. ALVAREZ: Pretty much so.

18 MS. SEN: Okay, but not everything.

19 MS. ALVAREZ: No, not everything. Pretty  
20 much so.

21 MS. SEN: And you stated in paragraph 8  
22 that you did not include everything that was  
23 discussed into your meeting minutes. Is that  
24 correct?

25 MS. ALVAREZ: I don't write everything

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1           verbatim.

2           MS. SEN: Okay. And does the IEP itself

3           state everything that was discussed in the

4           meeting?

5           MS. ALVAREZ: Absolutely.

6           MS. SEN: Okay. Everything.

7           MS. ALVAREZ: It includes--yeah,

8           includes everything that was discussed at the

9           meeting.

10          MS. SEN: Okay. You stated that you

11          participate in over 100 IEP reviews with Miss

12          Ord. Is that correct?

13          MS. ALVAREZ: That's correct.

14          MS. SEN: And how many total IEP reviews

15          have you participated in?

16          HEARING OFFICER NOE: Total over how

17          many years?

18          MS. ALVAREZ: How many--

19          MS. SEN: (Interposing) Last year was

20          your first year in the school.

21          MS. ALVAREZ: Yes, it was.

22          MS. SEN: So how many total IEP reviews

23          did you participate in last year and up to this

24          point?

25          MS. ALVAREZ: Over 100, 200.

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1           MS. SEN: Okay. And how many this year?

2           MS. ALVAREZ: Over 200.

3           MS. SEN: Okay. Did you translate for

4           Ms. M [REDACTED] during the IEP meeting?

5           MS. ALVAREZ: Yes, I did.

6           MS. SEN: Okay. And did you translate

7           every word of the meeting?

8           MS. ALVAREZ: Yes.

9           MS. SEN: And you typed the meeting

10          minutes.

11          MS. ALVAREZ: Yes.

12          MS. SEN: And you typed the IEP itself?

13          MS. ALVAREZ: After the meeting.

14          MS. SEN: Okay. And you participated in

15          the meeting.

16          MS. ALVAREZ: And I participated in the

17          meeting.

18          MS. SEN: And your testimony is that you

19          translated every word that was discussed in that

20          meeting--

21          MS. STEWART: (Interposing) Now I just

22          want to object to this line of questioning--

23          (Crosstalk)

24          MS. STEWART: --raised in the Due

25          Process Complaint--

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1 (Crosstalk)  
2 HEARING OFFICER NOE: Wait, wait, wait.  
3 MS. ALVAREZ: --then yes, it was.  
4 HEARING OFFICER NOE: Why can't anybody  
5 ever advise their clients that this is a hearing,  
6 when there's an objection, they have to wait?  
7 Please.  
8 MS. STEWART: I had an objection, Miss  
9 Alvarez.  
10 MS. ALVAREZ: I'm sorry.  
11 HEARING OFFICER NOE: So you have to  
12 wait.  
13 MS. ALVAREZ: Okay.  
14 MS. STEWART: I objected to asking about  
15 the translation issue, because it wasn't raised  
16 in the Due Process Complaint as an issue.  
17 MS. SEN: I didn't ask - - in order to  
18 address their repeated claims that the parent did  
19 not raise in there many times - - the parent--  
20 HEARING OFFICER NOE: (Interposing) Can  
21 you keep your voice up?  
22 MS. SEN: Oh, I'm sorry. There are many  
23 times--the DOE is raising the parent did not  
24 raise, did not raise, and while I have other  
25 arguments against that, another thing, that--

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1 HEARING OFFICER NOE: (Interposing) Is  
2 the parent claiming that she did raise or didn't  
3 raise it, because she didn't understand what was  
4 going on?  
5 MS. SEN: Yes.  
6 HEARING OFFICER NOE: And that's in your  
7 Due Process Complaint?  
8 MS. STEWART: That is not in the Due  
9 Process Complaint.  
10 MS. SEN: No. That's in response to the  
11 DOE's arguments.  
12 HEARING OFFICER NOE: But you--but  
13 you're not--  
14 (Crosstalk)  
15 HEARING OFFICER NOE: But your own  
16 Complaint doesn't have--  
17 (Crosstalk)  
18 MS. SEN: --the parent is not  
19 complaining about the translation of the meeting.  
20 HEARING OFFICER NOE: Okay. So then why  
21 are we going into this then?  
22 MS. SEN: Because if the DOE is saying  
23 that parent's responsibility is to raise these  
24 things, the parent didn't have an opportunity to  
25 do so. Not only was it not her responsibility,

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1 but the parent often did have an opportunity to  
2 do so, because no one accurately translated what  
3 was happening.

4 MS. STEWART: And I object to that,  
5 because that's not raised that no one accurately-  
6 -and it's not raised in the Due Process  
7 Complaint, in the parent's affidavits, and the  
8 affidavits of anyone do not make that claim.

9 MS. SEN: And I'm not making that as a  
10 claim. I'm saying that in response to the DOE's  
11 claims.

12 HEARING OFFICER NOE: Well, if it's in  
13 response, then why wouldn't it be part of your  
14 case-in-chief? Certainly, translation and  
15 understanding what's going on is a critical part,  
16 whether it's your case or their case.

17 MS. SEN: Yes.

18 HEARING OFFICER NOE: So why wouldn't  
19 you--why would you not have raised that, if in  
20 fact--this is just a new defense because of  
21 their--

22 MS. SEN: (Interposing) No.

23 HEARING OFFICER NOE: --because of their  
24 position? I mean, translation is as basic as we  
25 could get, isn't it?

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1 MS. SEN: Right.

2 HEARING OFFICER NOE: And if, in fact,  
3 your client--

4 (Crosstalk)

5 MS. SEN: It didn't come to light that  
6 my client did not understand everything that  
7 happened in the meeting until after we understood  
8 what the DOE was saying happened in the meeting,  
9 because my client has no basis to understand that  
10 she missed what was happening in the meeting.

11 She only speaks Spanish, so she only understood  
12 what was told to her, and Miss Ord does not speak  
13 Spanish, so she only understood--

14 HEARING OFFICER NOE: (Interposing) But  
15 has the--

16 MS. SEN: --in English.

17 HEARING OFFICER NOE: --but she's the  
18 one who is bringing the claim.

19 MS. SEN: Right, but she had no--

20 HEARING OFFICER NOE: (Interposing)  
21 She's the one who's saying the DOE failed to do  
22 something.

23 MS. SEN: Right, but--

24 (Crosstalk)

25 HEARING OFFICER NOE: And--

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1 MS. SEN: --what the DOE was saying  
2 about what happened in the meeting, she did not  
3 realize that things were said that she didn't  
4 understand.

5 HEARING OFFICER NOE: So then how could  
6 she bring these charges if she didn't understand  
7 what was saying--

8 MS. SEN: (Interposing) Because there  
9 are many other things that she's bringing the  
10 claims - - .

11 HEARING OFFICER NOE: But she is  
12 challenging the IEP.

13 MS. SEN: Yes. And how much of what was  
14 said.

15 HEARING OFFICER NOE: But now we're  
16 going to tear it apart, and see what she didn't  
17 understand? Okay. What's the question to this  
18 witness? I'm a little confused by your position,  
19 but what is the question to this witness?

20 MS. SEN: I think she already answered,  
21 but... Miss Alvarez, you said you translated for  
22 Ms. M [REDACTED] during the meeting?

23 MS. ALVAREZ: After every section,  
24 after--we stop, we pause, and I translate. If  
25 she had any further questions, it was brought to

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1 the psychologist, it was brought to the table, so  
2 she understood, and she had no further questions  
3 when she left.

4 MS. SEN: Okay. But what I'm asking is  
5 did you translate every word of the meeting? Did  
6 you translate everything that everyone said in  
7 the meeting?

8 MS. ALVAREZ: When we spoke again, after  
9 every section, we spoke.

10 MS. SEN: That's not my question, Miss  
11 Alvarez--

12 (Crosstalk)

13 MS. ALVAREZ: Yes, every word was  
14 translated to her.

15 MS. SEN: And I asked if you typed the  
16 meeting minutes.

17 MS. ALVAREZ: Yes, I did.

18 MS. SEN: And that you typed the IEP  
19 itself.

20 MS. ALVAREZ: Right.

21 MS. SEN: And that you participated in  
22 the meeting.

23 MS. ALVAREZ: Yes, I did.

24 MS. SEN: Okay. Miss Alvarez, can you  
25 describe the triennial review process?

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1 MS. ALVAREZ: On the triennial review,  
2 we normally have testing done before, normally an  
3 educational update before the meeting.

4 MS. SEN: Before the meeting. Okay.  
5 And how often is that done for each student?

6 MS. ALVAREZ: On the triennial, every  
7 three years.

8 MS. SEN: Okay. And so a component of  
9 that process is consulting the parent about  
10 whether evaluations or assessments need to be  
11 conducted?

12 MS. ALVAREZ: Correct.

13 MS. SEN: And that's usually done before  
14 the meeting.

15 MS. ALVAREZ: Pardon?

16 MS. SEN: And you said that's usually  
17 done before the meeting?

18 MS. ALVAREZ: Right, through a letter  
19 that's sent--

20 MS. SEN: (Interposing) Okay. Through a  
21 letter. And so the DOE has a letter that it  
22 sends the parent that indicates that it's a  
23 triennial review?

24 MS. ALVAREZ: Correct.

25 MS. SEN: Okay. And isn't it true that

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1 prior to May 2008, the last triennial review for  
2 J [REDACTED] S [REDACTED] was conducted in 2008?

3 MS. ALVAREZ: I don't have anything that  
4 I can refer back to.

5 MS. SEN: Okay. But you know that the  
6 DOE did not itself conduct any evaluations at  
7 least after the 2009 Kennedy evaluation?

8 MS. ALVAREZ: Okay. If that's what you  
9 say, yes.

10 MS. SEN: No, it's not if that's what I  
11 say. Is that true?

12 MS. ALVAREZ: I don't know. I don't  
13 have any documents in front of me that I could  
14 refer to.

15 MS. SEN: So in the meeting, you did not  
16 have any evaluations that were conducted after  
17 the 2009...

18 MS. ALVAREZ: We probably had the 2009,  
19 and we had whatever updated assessments were done  
20 in the school.

21 MS. SEN: Okay. So if you had any--if  
22 the DOE had conducted any assessments prior or  
23 after 2009--after that 2009 Kennedy evaluation  
24 that was written in June of 2009, you would've  
25 had that in the meeting with you.

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1 MS. ALVAREZ: Right, but the 2009  
 2 evaluation, we couldn't use that--  
 3 MS. SEN: (Interposing) That's not my  
 4 question, Miss Alvarez--  
 5 MS. ALVAREZ: (Interposing) --three  
 6 years.  
 7 MS. SEN: It's just if there were any  
 8 DOE evaluations that had been done--  
 9 MS. ALVAREZ: (Interposing) It would've  
 10 been in SESIS.  
 11 MS. SEN: --correct? Okay. And so you  
 12 didn't have an adaptive functioning assessment in  
 13 front of you, did you?  
 14 MS. ALVAREZ: No.  
 15 MS. SEN: So that had not been done  
 16 since at least 2009, if it had ever been done?  
 17 MS. STEWART: I'm going to object to  
 18 that, because I don't even know what an adaptive-  
 19 -  
 20 (Crosstalk)  
 21 MS. STEWART: --functioning assessment  
 22 is.  
 23 HEARING OFFICER NOE: I don't know what  
 24 you're talking about, either.  
 25 MS. SEN: Ms. Alvarez, can you explain

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1 what an adaptive functioning--  
 2 (Crosstalk)  
 3 MS. ALVAREZ: --can explain it to us--  
 4 HEARING OFFICER NOE: (Interposing)  
 5 Well, why do we need--is this a--wait, wait.  
 6 Does this student have an adaptive--do we have  
 7 one for--  
 8 MS. ALVAREZ: (Interposing) Adaptive  
 9 physical ed?  
 10 HEARING OFFICER NOE: Wait, please.  
 11 MS. ALVAREZ: Sorry.  
 12 MS. SEN: It's the non-existence of the  
 13 document that matters.  
 14 HEARING OFFICER NOE: Well, you can't--  
 15 so we're going to talk to--we're going to ask her  
 16 for a non-existent document?  
 17 MS. SEN: We're going to ask her if she  
 18 had one when she was--  
 19 HEARING OFFICER NOE: (Interposing) But  
 20 it's non-existent. You just told me--  
 21 MS. SEN: (Interposing) Right, but we're  
 22 not saying--  
 23 HEARING OFFICER NOE: --so it doesn't  
 24 exist.  
 25 MS. SEN: --claims is that there wasn't

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1           adequate evaluative data.

2                   HEARING OFFICER NOE: Okay, but you

3           can't ask he about a document that's not

4           existing--

5                   MS. SEN: (Interposing) I'm not asking

6           her to describe it. I'm just asking her if she

7           had one.

8                   HEARING OFFICER NOE: Well, she didn't,

9           because we don't have it.

10                  MS. SEN: Okay.

11                  HEARING OFFICER NOE: There is none.

12                  MS. SEN: And you also did not have a

13           transition assessment.

14                  MS. STEWART: Again, I'm going to

15           object, because--

16                  (Crosstalk)

17                  MS. ALVAREZ: --yes, we did have a

18           transition, which was provided by Sally Ord.

19                  MS. SEN: Is that one of the documents

20           in evidence?

21                  HEARING OFFICER NOE: How does she know

22           what's in evidence--

23                  (Crosstalk)

24                  MS. ALVAREZ: That was part of the IEP,

25           that was what was put in the IEP.

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1                   HEARING OFFICER NOE: She just--I just

2           looked at that, didn't I? She just testified--

3                  (Crosstalk)

4                   HEARING OFFICER NOE: --transition from

5           the Cooke Center. That's what she's talking

6           about.

7                  MS. ALVAREZ: Right.

8                  MS. SEN: You're talking about the

9           transition goals--

10                  MS. ALVAREZ: (Interposing) And that's

11           in the IEP.

12                  MS. SEN: --that Sally Ord wrote up?

13                  MS. ALVAREZ: --provided by Cooke and

14           the school reports.

15                  (Crosstalk)

16                  MS. SEN: Okay. So that's Item 6.

17                  HEARING OFFICER NOE: Is that Item 6?

18           Is that the one she's talking about?

19                  MS. STEWART: You know what? I have

20           actually never heard of transition assessment. I

21           don't know what she means by that.

22                  MS. ALVAREZ: But you said adaptive

23           phys?

24                  MS. SEN: I asked you about a transition

25           assessment, and you're saying--

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1 MS. ALVAREZ: (Interposing) The  
 2 transition assessment, part of the transition  
 3 component is in the Cooke report.  
 4 MS. SEN: Okay. So you're saying that  
 5 the Cooke transition report...  
 6 HEARING OFFICER NOE: Wait a second.  
 7 What are you talking about? Could you just tell  
 8 us what you're talking about?  
 9 MS. ALVAREZ: Are you speaking to me?  
 10 HEARING OFFICER NOE: Yes, Miss Alvarez.  
 11 MS. ALVAREZ: Hi. She's talking about  
 12 the transition component.  
 13 HEARING OFFICER NOE: And I am asking  
 14 you, what is it?  
 15 MS. ALVAREZ: Okay. It's how the kid is  
 16 going to transition from high school to a  
 17 vocational school, or what are his plans or his  
 18 dreams or his goals, and that's part of the Cooke  
 19 report.  
 20 HEARING OFFICER NOE: What Cooke report?  
 21 We've got like five documents that have the name  
 22 Cooke on it. Which one are you talking about?  
 23 MS. ALVAREZ: Okay. So... Okay. Let me  
 24 look through it. Normally part of the...  
 25 HEARING OFFICER NOE: Is she looking at

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1 your Exhibits? Is that what she's looking at?  
 2 MS. STEWART: I did provide her a copy  
 3 of the Exhibits, and I also provided her a copy  
 4 of the disclosure list. I don't think she has  
 5 anything else.  
 6 MS. ALVAREZ: Let me see. Hold on.  
 7 That's a 2011-12. So you can see it on Exhibit 4-  
 8 12, which is part of the transition.  
 9 HEARING OFFICER NOE: Exhibit 4, page  
 10 12?  
 11 MS. ALVAREZ: Yes  
 12 HEARING OFFICER NOE: Okay. So this one  
 13 says course internships, content goals. Is that  
 14 what you are talking about?  
 15 MS. ALVAREZ: Yes. That's part of the--  
 16 yes, that's part of the internship vocational  
 17 skills, too. Let me see...  
 18 HEARING OFFICER NOE: So this is the  
 19 transition that you're talking about?  
 20 MS. ALVAREZ: Yeah, that's part of the  
 21 transition. Yes.  
 22 HEARING OFFICER NOE: Okay. So Exhibit  
 23 4, page 12, from actually, the Cooke Center,  
 24 correct?  
 25 MS. ALVAREZ: Correct.

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1 HEARING OFFICER NOE: Okay. That's the  
 2 transition--that's--  
 3 MS. SEN: (Interposing) Is it your  
 4 testimony that this page is a transition  
 5 assessment?  
 6 MS. ALVAREZ: It's part of it yes. It's  
 7 part of the information we include into it.  
 8 MS. SEN: Is there anything else?  
 9 MS. ALVAREZ: Oh, I don't--not that I'm  
 10 seeing here in what's provided to me.  
 11 MS. SEN: Okay. So I--  
 12 MS. ALVAREZ: (Interposing) - - send  
 13 electronically through Cooke, so there could be  
 14 something that's not here. Again, I don't have  
 15 access to--  
 16 MS. SEN: (Interposing) Do you have  
 17 Exhibit 6, Miss Alvarez--  
 18 MS. ALVAREZ: Yes, ma'am.  
 19 HEARING OFFICER NOE: Is that the same  
 20 that you--  
 21 MS. ALVAREZ: (Interposing) Hold on.  
 22 I'm looking at the IEP. Okay. Go ahead.  
 23 HEARING OFFICER NOE: Exhibit 6? Can  
 24 you go to Exhibit 6?  
 25 MS. ALVAREZ: Exhibit 6. Yes, I am

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1 here. There you go. That's part of that--yeah.  
 2 MS. SEN: Okay. So it's your testimony  
 3 that Exhibit 6, titled J [REDACTED] S [REDACTED] IEP  
 4 Transition--  
 5 MS. ALVAREZ: (Interposing) Correct.  
 6 MS. SEN: --page 4-12--  
 7 MS. ALVAREZ: (Interposing) It's all  
 8 part of--  
 9 (Crosstalk)  
 10 MS. SEN: --is the internship content  
 11 goals is J [REDACTED]'s transition assessment?  
 12 MS. ALVAREZ: Right. So this transition  
 13 assessment normally comes--it's included in that  
 14 packet 4.  
 15 MS. SEN: Okay.  
 16 HEARING OFFICER NOE: Please wait until  
 17 the attorney has finished her question to start  
 18 speaking.  
 19 MS. ALVAREZ: Okay.  
 20 HEARING OFFICER NOE: You continually  
 21 start to speak before she has finished the  
 22 question, and then we don't have a good  
 23 transcript, okay?  
 24 MS. ALVAREZ: Okay.  
 25 MS. SEN: You said earlier that the DOE

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1 has a form that it sends to parents when a  
 2 triennial review is due, and that form was not  
 3 sent to Ms. M [REDACTED] before the May 2012 meeting,  
 4 correct?  
 5 MS. ALVAREZ: What form?  
 6 MS. SEN: The triennial review form--  
 7 MS. ALVAREZ: (Interposing) I'm not--  
 8 MS. SEN: --the letter?  
 9 MS. ALVAREZ: A triennial review is just  
 10 a letter stating that we permission so that, you  
 11 know, just reminding her that it's a triennial.  
 12 MS. SEN: Okay. And that was not the  
 13 letter that was sent to Ms. M [REDACTED] before the  
 14 May--  
 15 MS. ALVAREZ: (Interposing) I don't  
 16 know. I'm not sure of that.  
 17 MS. SEN: Okay. We have in evidence the  
 18 letter that was sent to her. It's actually  
 19 Exhibit 2.  
 20 MS. ALVAREZ: Okay.  
 21 MS. SEN: Is that a triennial review  
 22 letter?  
 23 MS. ALVAREZ: I don't know. I don't...  
 24 Yeah, that's the way it looks, because the  
 25 triennial is an annual. Yeah. So--

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1 MS. SEN: (Interposing) So your  
 2 testimony--  
 3 (Crosstalk)  
 4 MS. ALVAREZ: --yes, no.  
 5 MS. SEN: --is that a triennial review  
 6 letter looks exactly the same? It says--  
 7 MS. ALVAREZ: (Interposing) So there's  
 8 another letter that states--that goes out--this  
 9 is the meeting.  
 10 MS. SEN: Right.  
 11 MS. ALVAREZ: Okay. So the triennial  
 12 would be a letter stating that we need permission  
 13 to.  
 14 MS. SEN: Okay.  
 15 MS. ALVAREZ: But this is the actual IEP  
 16 annual meeting--  
 17 (Crosstalk)  
 18 MS. SEN: This is the annual--  
 19 MS. ALVAREZ: (Interposing) That's for  
 20 her to come in. This is not for the child to be  
 21 tested.  
 22 MS. SEN: Okay.  
 23 MS. ALVAREZ: So you have it confused.  
 24 MS. SEN: I'm not sure I do, actually.  
 25 MS. ALVAREZ: Okay. So--

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1 MS. SEN: (Interposing) This is an  
 2 annual review--  
 3 MS. ALVAREZ: (Interposing) Okay. So  
 4 the triennial notice is giving--sending out a  
 5 letter stating--reminding the parent that this is  
 6 a triennial.  
 7 MS. SEN: Right.  
 8 MS. ALVAREZ: And so with that in mind,  
 9 consent has to be sent in so that testing could  
 10 be conducted. Once all of these components are  
 11 done, an annual, which is the one you're seeing,  
 12 is sent to the parents so we can meet and speak  
 13 about test results, so you're confusing both.  
 14 MS. SEN: I actually don't think I am,  
 15 but okay. And was a triennial letter sent to the  
 16 parent prior to the May 2012 meeting.  
 17 MS. STEWART: Objection. Asked and  
 18 answered.  
 19 MS. ALVAREZ: I don't have--  
 20 HEARING OFFICER NOE: (Interposing)  
 21 Overruled. Do you send out these letters, these  
 22 triennial evaluation letters?  
 23 MS. ALVAREZ: Either I do or the  
 24 psychologist on my team--  
 25 HEARING OFFICER NOE: (Interposing) Did

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1 you send one out here?  
 2 MS. ALVAREZ: Pardon?  
 3 HEARING OFFICER NOE: Did you send one  
 4 out in this case?  
 5 MS. ALVAREZ: I don't remember.  
 6 HEARING OFFICER NOE: Okay. There's  
 7 yours answer.  
 8 (Crosstalk)  
 9 MS. ALVAREZ: - - computer.  
 10 MS. SEN: Miss Alvarez, you state in  
 11 your affidavit that the results of the 2009  
 12 psychoed conducted at the Kennedy Center are  
 13 still valid. What does that mean?  
 14 MS. ALVAREZ: It's within the three  
 15 years.  
 16 MS. SEN: I'm asking you what it means  
 17 to be within three years. Is that a clinically  
 18 significant--  
 19 MS. ALVAREZ: (Interposing) That's just  
 20 some words that are put there, the regulations  
 21 that they're valid within three years, we can  
 22 use--they can be used.  
 23 MS. SEN: So your testimony is that  
 24 there's a law stating that psychoeducational  
 25 evaluations can be used when they're conducted--

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1 MS. ALVAREZ: (Interposing) Regulations.  
 2 Part of the...  
 3 MS. SEN: --within three years of the  
 4 meeting?  
 5 MS. ALVAREZ: Yes. Correct.  
 6 MS. SEN: And does it matter when the  
 7 testing was conducting, or when the report was  
 8 written--  
 9 MS. ALVAREZ: (Interposing) Yeah. So if  
 10 it's nine and we conducted the testing--we  
 11 conducted the meeting in 2012, then--  
 12 (Crosstalk)  
 13 HEARING OFFICER NOE: She doesn't wait  
 14 for you to finish, and this is torturous. You  
 15 got to wait for her to finish, she's got to wait  
 16 for you to finish.  
 17 MS. SEN: So I understand what you're  
 18 saying. What I'm asking you is if it matters  
 19 what the date was that the test was conducted, or  
 20 the date that the test was written?  
 21 HEARING OFFICER NOE: The report was  
 22 written.  
 23 MS. SEN: Right. Sorry. The report.  
 24 MS. ALVAREZ: Right. So it's within  
 25 three years, so we can use it.

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1 MS. SEN: I understand--  
 2 (Crosstalk)  
 3 HEARING OFFICER NOE: She doesn't under-  
 4 -she doesn't know.  
 5 MS. SEN: Okay. So--  
 6 HEARING OFFICER NOE: (Interposing) She  
 7 doesn't know if it's the date of the evaluation,  
 8 or if it's the day of the report.  
 9 (Crosstalk)  
 10 HEARING OFFICER NOE: She's just telling  
 11 you that she believes it's three years.  
 12 MS. ALVAREZ: It's three years--  
 13 (Crosstalk)  
 14 HEARING OFFICER NOE: --and that's her  
 15 testimony.  
 16 MS. SEN: Is it three years from when  
 17 the evaluation was conducted?  
 18 MS. ALVAREZ: It's a few days. When  
 19 it's conducted and written, it just like a few  
 20 days--I mean, it's not like they conduct a test,  
 21 and then they wait another year to write it.  
 22 It's just a few days' difference. Hello?  
 23 MS. SEN: I'm here.  
 24 HEARING OFFICER NOE: Hold on.  
 25 MS. SEN: Ms. Alvarez, is it true that

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1 during the meeting, the team changed J■■■■'s  
 2 classification from speech and language to  
 3 autism?  
 4 MS. STEWART: I'm going to object to  
 5 that--  
 6 MS. ALVAREZ: (Interposing) I don't  
 7 remember.  
 8 (Crosstalk)  
 9 HEARING OFFICER NOE: Wait.  
 10 MS. STEWART: The classification is not  
 11 an issue.  
 12 HEARING OFFICER NOE: Well, overruled.  
 13 Do you know?  
 14 MS. ALVAREZ: I don't remember. If I  
 15 looked at my minutes...  
 16 HEARING OFFICER NOE: Doesn't remember.  
 17 MS. SEN: That's fine. Okay. Actually,  
 18 maybe you should look at your minutes.  
 19 HEARING OFFICER NOE: Ask another  
 20 question.  
 21 MS. SEN: Do you remember the basis for  
 22 making that change?  
 23 HEARING OFFICER NOE: Are you  
 24 challenging--  
 25 MS. ALVAREZ: (Interposing) Am I looking

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1 at the minutes, or am I answering the question?  
 2 HEARING OFFICER NOE: You're looking at  
 3 the minutes, and answering the question.  
 4 MS. ALVAREZ: Okay. So give me a minute  
 5 to look at the minutes.  
 6 HEARING OFFICER NOE: Are you  
 7 challenging the student's classification?  
 8 MS. SEN: No. I'm challenging the  
 9 sufficiency of the  
 10 MS. ALVAREZ: (Interposing) It had to be  
 11 something agreed upon.  
 12 HEARING OFFICER NOE: Well, then if  
 13 you're challenging the sufficiency of the  
 14 evaluation, you're not going to challenge the  
 15 classification.  
 16 MS. SEN: No, but what I am asking is  
 17 does the psychoed provide you with information  
 18 about the ways that J■■■■'s autism affects his  
 19 educational needs?  
 20 MS. ALVAREZ: Does the report?  
 21 MS. SEN: Yes.  
 22 MS. ALVAREZ: Absolutely. He has--yes.  
 23 MS. SEN: Can you tell me where it  
 24 describes J■■■■'s needs related to--  
 25 MS. ALVAREZ: (Interposing) Okay. I

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1 don't even have that in front of me.

2 MS. SEN: --his autism.

3 MS. ALVAREZ: --his testing in 2000-and...

4 MS. SEN: You don't have that

5 psychoeducational evaluation in front of you?

6 MS. ALVAREZ: No, I don't. Is it part

7 of it? Oh, here you go.

8 HEARING OFFICER NOE: You can't ask

9 questions. Just hold on. She doesn't have it in

10 front of her.

11 MS. STEWART: She has all the DOE's

12 Exhibit if you want to refer--

13 MS. SEN: (Interposing) Okay. It's--

14 MS. STEWART: --refer her to something.

15 MS. SEN: It's Exhibit 5.

16 MS. ALVAREZ: Okay. I have it. Now

17 your question is?

18 MS. SEN: My question is--

19 MS. STEWART: (Interposing) Can we move

20 Exhibit 5 into evidence?

21 HEARING OFFICER NOE: Yeah. 5 is in

22 evidence.

23 MS. STEWART: Okay.

24 (Whereupon, District Exhibit 5 was

25 admitted into evidence.)

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1 MS. SEN: Can you tell me where the

2 evaluation describes [REDACTED]'s autism, and how that

3 relates to his education needs?

4 MS. ALVAREZ: How does it classify him

5 as autistic. Well, we're looking at the--

6 MS. SEN: (Interposing) No. Where does

7 it describe his needs as related to--

8 MS. ALVAREZ: (Interposing) We're

9 looking at his verbal, his perceptual, his

10 memory, his intellectual functioning. I mean,

11 these are all... These are all sections that we

12 look at.

13 MS. SEN: Ms. Alvarez--

14 MS. ALVAREZ: (Interposing) But

15 normally, a doctor--okay. Go ahead.

16 MS. SEN: No, go ahead.

17 MS. ALVAREZ: Normally, it's, you know,

18 a doctor also was, you know, questions that--

19 questions are asked, was he diagnosed with PDD

20 NOS, was there a physician, did he--was he

21 diagnosed early on...

22 MS. SEN: And did you ask Miss M [REDACTED] if

23 she had any sort of assessment from a doctor?

24 MS. ALVAREZ: Well, it's not--you know,

25 the questions we ask, and if she would have

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1 provided it, yes. that's common.  
 2 MS. SEN: I'm not sure. Did you ask  
 3 her?  
 4 MS. STEWART: I'm going to object--  
 5 (Crosstalk)  
 6 MS. ALVAREZ: I don't remember if we  
 7 asked her--  
 8 (Crosstalk)  
 9 MS. STEWART: --classification is not in  
 10 dispute--  
 11 MS. ALVAREZ: --we normally ask a  
 12 parent.  
 13 MS. SEN: --questioning, anyway.  
 14 MS. ALVAREZ: --so low functioning--  
 15 (Crosstalk)  
 16 HEARING OFFICER NOE: All right. Thank  
 17 you, thank you, thank you.  
 18 MS. ALVAREZ: --teachers.  
 19 MS. SEN: Miss Alvarez, we're... Okay. I  
 20 have just a couple more questions for you. You  
 21 stated in your affidavit that you reviewed a  
 22 Stanford-Binet created by someone at Cooke. Does  
 23 that document tell you anything about J■■■■'s  
 24 social emotional functioning?  
 25 MS. ALVAREZ: The Stanford-Binet?

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1 MS. SEN: Yes. It is in--  
 2 HEARING OFFICER NOE: (Interposing)  
 3 Fifteen.  
 4 MS. SEN: Fifteen.  
 5 MS. ALVAREZ: Fifteen?  
 6 HEARING OFFICER NOE: In evidence. No  
 7 objection by the Parent.  
 8 MS. STEWART: I'm sorry. It's the  
 9 affidavit. You said that's an affidavit?  
 10 MS. SEN: It is...  
 11 (Whereupon, District Exhibit 15 was  
 12 admitted into evidence.)  
 13 (Background Conversation)  
 14 MS. STEWART: I'm just recalling what  
 15 that says, and I'm thinking I might object.  
 16 MS. SEN: It's paragraph 19.  
 17 HEARING OFFICER NOE: Okay. So what's  
 18 your question?  
 19 MS. SEN: Does it provide any  
 20 information about J■■■■'s social emotional  
 21 functioning?  
 22 MS. STEWART: And I'm just going to  
 23 object to that as not relevant to anything in the  
 24 Due Process Complaint. What the affidavit says  
 25 is that that document was not provided to the DOE

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1 during the time of the IEP meeting.  
 2 MS. SEN: And my line of questioning is  
 3 to determine whether or not it would have  
 4 affected Miss Alvarez's decision making.  
 5 MS. STEWART: Well, that would be--  
 6 HEARING OFFICER NOE: (Interposing) But  
 7 it wasn't provided.  
 8 MS. STEWART: --testimony.  
 9 HEARING OFFICER NOE: If it wasn't  
 10 provided, do you want to reach back now and make  
 11 believe it was provided?  
 12 MS. SEN: No.  
 13 HEARING OFFICER NOE: So then how do we  
 14 recreate something that they didn't have in front  
 15 of them? I mean, if they didn't have it in front  
 16 of them, you want to--  
 17 (Crosstalk)  
 18 HEARING OFFICER NOE: --hypothetical?  
 19 MS. SEN: I want to know if it would  
 20 have affected her decision making.  
 21 HEARING OFFICER NOE: The Cooke Center  
 22 didn't provide this, and now you want to ask her  
 23 if they did, whether it would have affected her  
 24 decision making?  
 25 MS. SEN: Yes.

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1 HEARING OFFICER NOE: Okay. Can you  
 2 answer that question?  
 3 MS. ALVAREZ: They should have provided  
 4 the information at the--if they thought it was  
 5 going to make a difference.  
 6 MS. SEN: Miss Alvarez, that's not my  
 7 question.  
 8 MS. ALVAREZ: What is your question?  
 9 MS. SEN: My question is, does it tell  
 10 you anything about J. [REDACTED]'s social emotional  
 11 functioning?  
 12 MS. ALVAREZ: On the Stanford-Binet?  
 13 MS. SEN: Yes.  
 14 MS. ALVAREZ: Well, it depends on which  
 15 component we're looking at.  
 16 MS. SEN: Are you looking at it right  
 17 now?  
 18 HEARING OFFICER NOE: Can you answer  
 19 that question? Miss Alvarez--  
 20 MS. ALVAREZ: (Interposing) If you're  
 21 looking at his fluid reasoning, that fell  
 22 between--that was average.  
 23 MS. SEN: I'm not asking you for the  
 24 results of the IQ test, just whether it tells you  
 25 about social emotional functioning.

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1 MS. ALVAREZ: You would have to  
 2 understand the testing. You could--yes, it  
 3 could.  
 4 HEARING OFFICER NOE: Okay. So that's  
 5 her testimony. Yes, it could.  
 6 MS. SEN: Okay. And if you had this  
 7 document at the time of the May 2012 IEP meeting,  
 8 would it have influenced you to change your  
 9 recommendations in any way?  
 10 MS. ALVAREZ: No.  
 11 MS. SEN: No.  
 12 MS. ALVAREZ: No.  
 13 MS. SEN: Okay. Thank you, Miss  
 14 Alvarez--  
 15 (Crosstalk)  
 16 MS. SEN: That's all my questions.  
 17 MS. ALVAREZ: Can I--  
 18 MS. SEN: (Interposing) No.  
 19 MS. STEWART: I just want to clarify.  
 20 Exhibit 4, 6, and 15 are now in evidence?  
 21 HEARING OFFICER NOE: And the 11.  
 22 MS. STEWART: 4, 6, and 15.  
 23 HEARING OFFICER NOE: 4, 6, 11, and--  
 24 we're going to get them all in at some point.  
 25 MS. STEWART: Okay. I wasn't sure how

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1 this works. Okay.  
 2 (Crosstalk)  
 3 HEARING OFFICER NOE: If you want to  
 4 refer, yeah.  
 5 MS. STEWART: No, not necessarily. Miss  
 6 Alvarez, during your cross, you mentioned that a  
 7 paraprofessional assists with instruction. What  
 8 do you mean by that?  
 9 MS. SEN: Actually, I think that was not  
 10 her testimony. Oh, assists? Yeah.  
 11 MS. ALVAREZ: A person that will sit  
 12 with the child, a para, and assist the child as  
 13 needed. Hello?  
 14 MS. STEWART: Yes. I'm sorry. I'm just  
 15 writing down... Trying to think..  
 16 MS. ALVAREZ: I thought I lost you.  
 17 HEARING OFFICER NOE: Anything else?  
 18 MS. STEWART: Miss Alvarez, is a  
 19 classroom observation part of a triennial?  
 20 MS. ALVAREZ: Yes, it is.  
 21 MS. STEWART: Okay. And we have in  
 22 evidence as Exhibit 16--  
 23 MS. ALVAREZ: (Interposing) Yes.  
 24 MS. STEWART: I guess we can move that  
 25 into evidence now, as a classroom observation.

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1 That was conducted after 2009, correct?  
2 MS. ALVAREZ: - - 2009, yes.  
3 (Whereupon, District Exhibit 16 was  
4 admitted into evidence.)  
5 MS. STEWART: You know what? I don't  
6 have anything else.  
7 HEARING OFFICER NOE: Anything else?  
8 MS. SEN: Miss Alvarez, is the classroom  
9 observation sometimes conducted outside of a  
10 triennial evaluation?  
11 MS. ALVAREZ: It depends.  
12 MS. SEN: Okay. So it is sometimes not  
13 part of a triennial.  
14 HEARING OFFICER NOE: Sometimes it is,  
15 and sometimes it isn't--  
16 MS. ALVAREZ: (Interposing) There's a--  
17 (Crosstalk)  
18 HEARING OFFICER NOE: --that's what she-  
19 -okay.  
20 MS. ALVAREZ: --for the testing or yeah,  
21 we can do observations.  
22 MS. SEN: Okay. Thank you. That's all.  
23 HEARING OFFICER NOE: Okay. Thank you  
24 for your testimony.  
25 MS. ALVAREZ: Thank you.

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1 HEARING OFFICER NOE: Okay. All right.  
2 So we are adjourned until June 6<sup>th</sup> at 12:00. I'll  
3 hold onto the Exhibit, and then we'll deal with  
4 them on the next date. Are you resting?  
5 MS. STEWART: Yes.  
6 HEARING OFFICER NOE: Okay. So you'll  
7 have your witnesses ready to go. Again, I  
8 apologize. This case was actually on. The other  
9 case wasn't, but I am having serious problems  
10 with my Russian interpreters, and you have a  
11 wonderful Spanish interpreter.  
12 MS. STEWART: Thank you.  
13 HEARING OFFICER NOE: Thank you.  
14 (Whereupon, at 2:53 p.m. the proceeding  
15 was adjourned.)

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C E R T I F I C A T I O N

I, Mare Ianniello, do hereby certify that I typed the transcript In the Matter of [REDACTED] [REDACTED], taken on May 16, 2013 by Najuma Abdullah at the offices of the Department of Education, 131 Livingston Street, Brooklyn, New York, and that to the best of my ability, this is an accurate transcription of what was recorded at that time and place.



MARE IANNIELLO, Transcriber

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Sheet 8

testing - years

DEPARTMENT OF EDUCATION  
Of the  
CITY OF NEW YORK

-----  
In the Matter of:

J. [REDACTED] S. [REDACTED]

Case No.: 143983

-----X

**CORRECTED**

District #2  
131 Livingston Street  
Brooklyn, New York 11201

Thursday  
June 6, 2013

The above-entitled matter came on for hearing  
at 12:00 p.m.

BEFORE: MARY NOE,  
Impartial Hearing Officer

A P P E A R A N C E S:

For the Student:

AMANDA SEN, Attorney  
M. [REDACTED] M. [REDACTED], Parent  
MARY CLANCY, Director (Via Telephone)  
SALLY ORD, Teacher Consultant (Via Telephone)  
VICTORIA FOWLER, Coordinator (Via Telephone)  
FRANCIS TABONE, Head of School (Via Telephone)  
TODD SILVERBLATT, Attorney  
CRISMAILEN GUZMAN, Interpreter  
KATHERINE HIBBARD, Teacher (Via Telephone)

For the Department of Education:

BRITTANIA STEWART, Attorney

Ubiquis/Nation-Wide Reporting & Convention Coverage  
Twenty-Two Cortlandt Street – Suite 802, New York, NY 10007  
Phone 212-227-7440 \* 800-221-7242 \* Fax 212-227-7524

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RE DIRECT</u>	<u>RE CROSS</u>	<u>V. D.</u>	<u>J</u>
M. Clancy	-	118	141			
V. Fowler	143	143	165	168		
S. Ord	171	172	207	209		
K. Hibbard	215					
F. Tabone	-	217				
M. M. [REDACTED]	227	234	238	240		

E X H I B I T S

<u>PARENT</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
K	Affidavit of M. Clancy	118	118
M	Affidavit of S. Ord	171	171
S	Unofficial English affidavit, 5 pages	231	-
A	Due process response, 4/8/13, 3 pages	242	245
B	Letter to M. Jacobi, 2 pages	242	245
C	Letter to M. Jacobi, 3 pages	243	245
D	Enrollment contract, 2 pages	243	245
E	Enrollment contract, 2012/13, 2 pages	243	245
F	Tax return, 2012, G. S. [REDACTED], 2 pages	243	245
G	Tax return, 2012, M. M. [REDACTED], 2 pages	243	245
H	Sweeney School expenditures, 2010/11, 1 page	243	-
O	Letter to IHO from A. Sen, 4/29/13, 5 pages	244	245
P	Motion and opposition	243	245
Q	District response to parent's motion 5 pages	245	245
R	Parent's opening statement, 5 pages	245	245

<u>DEPARTMENT OF EDUCATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
27	Summer 2012 curriculum outline 1 page	138	138
28	Class schedule	160	-

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7	Speech and language discussion	177	177
8	Academic discussion document	179	179
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10	Discussion document	183	183
12	Notes of S. Ord	184	184
1	Due process complaint, 3/18/13, 5 pages	245	250
2	Meeting invitation, 4/30/12, 4 pages	246	250
3	IEP, 5/22/12, 15 pages	246	250
4	Progress report, March 2012, 16 pages	246	250
13	Progress report, June 2012, 14 pages	247	250
14	Student assessment portfolio, 7 pages	247	250
17	FNR, 6/15/12, 1 page	247	250
18	Progress report, November 2012 16 pages	247	250
19	Progress report, March 2013, 16 pages	248	250
20	Summer Academy goals, 4 pages	248	250
23	Summer Academy goals, 2 pages	249	-
24	No description, identification only	249	-
26	DOE opening statement, 3 pages	249	250

<u>IHO</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
1	Class schedule	170	170
2	Order on request for verbal Testimony	250	250
4	Response to motion for translation	252	252

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P R O C E E D I N G S

HEARING OFFICER NOE: Good afternoon.

We're here for a continuing hearing for J [REDACTED]

S [REDACTED]. My name is Mary Noe, and I've been

assigned to this case, 143983. This is the

second day of hearing. The first day of hearing

was May 16th, and I'm going to ask that everyone

in the room introduce themselves, starting with

my right.

MS. BRITTANIA STEWART: Brittania

Stewart, attorney for the Department of

Education.

MS. AMANDA SEN: Amanda Sen, attorney

for M [REDACTED] M [REDACTED], J [REDACTED] S [REDACTED]'s mother.

MS. M [REDACTED] M [REDACTED]: M [REDACTED] M [REDACTED],

J [REDACTED] S [REDACTED]'s mother.

MS. CRISMAILEN GUZMAN: Crismailen

Guzman, and I'm an interpreter.

HEARING OFFICER NOE: Can you hear that?

MS. MARY CLANCY: I didn't hear that.

HEARING OFFICER NOE: The interpreter

identified herself, and the parent is here.

Someone is coming in by phone. Can you identify

yourself?

MS. CLANCY: I'm Mary Clancy, assistant

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1 head of school at the Cooke Center Academy.  
 2 HEARING OFFICER NOE: Did you want to  
 3 call her as a witness?  
 4 MS. SEN: Yes.  
 5 HEARING OFFICER NOE: Ms. Clancy, do you  
 6 swear or affirm to tell the truth?  
 7 MS. CLANCY: Yes.  
 8 HEARING OFFICER NOE: State your name  
 9 again and whatever position you hold.  
 10 MS. CLANCY: Mary Clancy, assistant head  
 11 of Cooke Center Academy.  
 12 HEARING OFFICER NOE: I'm going to  
 13 check, but while I'm checking you might as well  
 14 get it in.  
 15 MS. SEN: Ms. Clancy, do you have the  
 16 affidavit that you signed on May 10th in front of  
 17 you?  
 18 MS. CLANCY: Yes, I do.  
 19 MS. SEN: And you swear that you signed  
 20 this affidavit?  
 21 MS. CLANCY: Yes.  
 22 MS. SEN: And that everything that is in  
 23 it was then true and is currently true?  
 24 MS. CLANCY: Yes.  
 25 HEARING OFFICER NOE: Any objection?

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1 MS. STEWART: No.  
 2 HEARING OFFICER NOE: Okay, so that's K  
 3 in evidence.  
 4 (Whereupon parent's Exhibit K was  
 5 admitted into evidence)  
 6 HEARING OFFICER NOE: Ms. Clancy, the  
 7 District's attorney has some questions for you.  
 8 Go right ahead.  
 9 MS. STEWART: Ms. Clancy, did you review  
 10 any documents in preparation for your testimony  
 11 today?  
 12 MS. CLANCY: Yes.  
 13 MS. STEWART: And what did you review?  
 14 MS. CLANCY: The summer program  
 15 curriculum outline and J [REDACTED]'s summer report.  
 16 MS. STEWART: And for what year did you  
 17 review the summer report?  
 18 MS. CLANCY: The 2012 summer report.  
 19 MS. STEWART: And drafting your  
 20 affidavit did you review any documents?  
 21 MS. CLANCY: Yes, those reports.  
 22 MS. STEWART: Have you reviewed the  
 23 other affidavits prepared by Cooke Center  
 24 employees?  
 25 MS. CLANCY: No.

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1 MS. STEWART: Ms. Clancy, what grades  
2 are your certifications in?  
3 MS. CLANCY: Grades one through six.  
4 MS. STEWART: And is that special  
5 education or general education?  
6 MS. CLANCY: Both.  
7 MS. STEWART: And in your affidavit you  
8 mentioned that Mr. Gale is certified in New York  
9 State. What is Mr. Gale certified in?  
10 MS. CLANCY: I don't have that  
11 information in front of me.  
12 MS. STEWART: So how did you know that  
13 he was certified at the time you drafted your  
14 affidavit?  
15 MS. CLANCY: He is certified in New York  
16 State. I don't know if it's for childhood  
17 education or students with disabilities or both.  
18 MS. STEWART: And how do you know he's  
19 certified?  
20 MS. CLANCY: For our summer program you  
21 have to have a certification to teach there.  
22 MS. STEWART: So Mr. Gale only taught  
23 J [REDACTED] during the summer?  
24 MS. CLANCY: He's also a math teacher  
25 here at the high school.

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1 MS. STEWART: Did he continue teaching  
2 J [REDACTED] during the school year?  
3 MS. CLANCY: For the 2012/2013 school  
4 year?  
5 MS. STEWART: Yes.  
6 MS. CLANCY: No.  
7 MS. STEWART: Now in your affidavit, and  
8 it looks like it's paragraph 11, you state that  
9 J [REDACTED]'s class consisted of, and I'm quoting,  
10 consisted of twelve students and two teachers.  
11 Who is the other teacher in the classroom?  
12 MS. CLANCY: The other teacher for  
13 J [REDACTED]'s summer class was Kaitlin McGovern.  
14 MS. STEWART: Is Kaitlin McGovern a  
15 certified teacher?  
16 MS. CLANCY: No.  
17 MS. STEWART: So why do you refer to her  
18 as a teacher in your affidavit?  
19 MS. CLANCY: She participates in all  
20 curriculum meetings, all of the related service  
21 meetings, and acts as an instructor in the summer  
22 program.  
23 MS. STEWART: What do you mean she acts  
24 as an instructor in the summer program?  
25 MS. CLANCY: She leads curriculum

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1 groups, supports all the classroom work, and  
2 supports Mr. Gale in teaching.

3 MS. STEWART: So even though she's not a  
4 certified teacher you actually consider her a  
5 teacher at the Cooke School.

6 MS. CLANCY: During the summer program,  
7 yes. The two teachers assigned to his class were  
8 Ms. McGovern and Mr. Gale.

9 MS. STEWART: Do you have any knowledge  
10 about J■■■■'s fall school year program or just  
11 the summer program?

12 MS. CLANCY: The school year program?

13 MS. STEWART: Yes.

14 MS. CLANCY: I have general knowledge of  
15 his school program.

16 MS. STEWART: No, I didn't say school  
17 program, I said the summer program. You  
18 mentioned that you reviewed the summer report and  
19 the summer program curriculum. Do you have  
20 knowledge about the continuing fall program in  
21 the fall curriculum for J■■■■?

22 MS. CLANCY: Yes.

23 MS. STEWART: Now you said in your  
24 affidavit, and this is paragraph 15, there was a  
25 related service period built into the schedule to

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1 minimize pull-outs. What was J■■■■s related  
2 service schedule for the summer?

3 MS. CLANCY: He received--can I look at  
4 the summer report?

5 MS. STEWART: Can you tell us what  
6 you're looking at? I just want to see if it's in  
7 evidence.

8 MS. CLANCY: Sure, it's the summer  
9 academy 2012 progress report. It says academic  
10 content skills on the first page.

11 MS. STEWART: Is that in evidence?

12 MS. SEN: I'm not sure that it's been  
13 admitted.

14 MS. CLANCY: I can look at the  
15 affidavit. The same information is in 22.

16 MS. SEN: It's number 20.

17 MS. STEWART: So I'm looking at your  
18 affidavit.

19 MS. CLANCY: Number 21 and 22 refer to  
20 his related services. So he had speech in a  
21 group for 30 minutes once a week and counseling  
22 twice a week.

23 MS. STEWART: So the speech was one  
24 session, 30 minutes.

25 MS. CLANCY: Correct.

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1 MS. STEWART: Do you know if that was  
2 push-in or pull-out?

3 MS. CLANCY: The related service is  
4 built into his schedule, so it's a separate  
5 schedule in the block called speech.

6 MS. STEWART: But my question was  
7 whether it was push-in or pull-out?

8 MS. CLANCY: It's a separate period so  
9 he's not pulled out of any classes or pushed into  
10 a class because it's built into the schedule as a  
11 related service block.

12 MS. STEWART: So is he in the classroom  
13 when he receives speech?

14 MS. CLANCY: He's in a speech office,  
15 but he's not missing a class period.

16 MS. STEWART: And the same question for  
17 counseling, the two sessions of counseling that  
18 you mentioned, was that push-in or pull-out?

19 MS. CLANCY: The same thing. It's  
20 built into his schedule that he's not assigned  
21 any other classes during that time. He's just  
22 assigned a counseling group.

23 MS. STEWART: What was [REDACTED]'s  
24 internship?

25 MS. CLANCY: He works at a park called

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1 Stuyvesant Park.

2 MS. STEWART: And when did he begin  
3 working there?

4 MS. CLANCY: That was his summer  
5 internship. I don't know the exact start date.

6 HEARING OFFICER NOE: Is that summer  
7 2012?

8 MS. CLANCY: Correct.

9 MS. STEWART: And how often did he go to  
10 that internship during the summer?

11 MS. CLANCY: Once a week.

12 MS. STEWART: And how long was he there  
13 when he would go once a week?

14 MS. CLANCY: It's about an hour at the  
15 job site with a half an hour on either end for  
16 travel training.

17 MS. STEWART: First of all what is  
18 Stuyvesant Park?

19 MS. CLANCY: Stuyvesant Park is a park,  
20 part of the New York City Parks and Recreation.  
21 They go to do maintenance work. It's in the east  
22 side of Manhattan.

23 MS. STEWART: And what did he do there?

24 MS. CLANCY: He did different outdoor  
25 activities for maintenance of the park, weeding

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1 of the garden, raking, fixing different things,  
2 materials in the park.

3 MS. STEWART: And how did he travel to  
4 that internship?

5 MS. CLANCY: By subway.

6 MS. STEWART: And was swimming  
7 incorporated for all students in the program?

8 MS. CLANCY: Yes.

9 MS. STEWART: How often did the students  
10 go swimming?

11 MS. CLANCY: For [REDACTED]'s program it was  
12 two afternoons a week.

13 MS. STEWART: And where did they go  
14 swimming?

15 MS. CLANCY: At a pool called Tony  
16 Dapalido (phonetic) off of the New York City  
17 Recreation Centers.

18 MS. STEWART: And how did the students  
19 get to that pool?

20 MS. CLANCY: By subway.

21 MS. STEWART: And how long did that  
22 period last for the swimming two afternoons a  
23 week?

24 MS. CLANCY: About an hour and a half.

25 MS. STEWART: Does that include travel

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1 time?

2 MS. CLANCY: Yes.

3 MS. STEWART: Your affidavit refers to a  
4 vocational survey. I'm not where, but do you  
5 know that is if that's in your affidavit?

6 MS. CLANCY: We administered a survey to  
7 students at the beginning of the summer program  
8 to see which internships they express preferences  
9 with.

10 MS. STEWART: Now on Fridays during the  
11 summer program did the students take a field trip  
12 every Friday?

13 MS. CLANCY: Yes.

14 MS. STEWART: And was that for the  
15 entire school day?

16 MS. CLANCY: No.

17 MS. STEWART: How long would the  
18 students go on the field trip?

19 MS. CLANCY: It depended on the  
20 particular activity. For example, they went to  
21 the Museum of Natural History to see a specific  
22 show, if I'm remembering correctly, at 10:30. So  
23 it depended on what time the workshop.

24 MS. STEWART: Now in your affidavit you  
25 mentioned that you developed the summer

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1 curriculum, is that correct?

2 MS. CLANCY: Correct.

3 MS. STEWART: Is that for all students  
4 that you developed the summer curriculum?

5 MS. CLANCY: Yes.

6 MS. STEWART: When you say you developed  
7 the summer curriculum what do you mean by  
8 curriculum?

9 MS. CLANCY: We have two different  
10 themes for the summer program. So we choose the  
11 themes, identify the texts or the resources that  
12 we'll be using over the summer, work with the  
13 teachers to develop goals, and support teachers  
14 in planning their lesson plans.

15 MS. STEWART: Now when you say you work  
16 with the teachers on developing goals, how do you  
17 develop the goals?

18 MS. CLANCY: We speak with J ■■■■■'s  
19 current teachers, work with our progress reports  
20 that we have of the students, and the teachers  
21 develop goals for the students.

22 MS. STEWART: So is it your testimony  
23 the summer goals are actually individualized for  
24 J ■■■■■?

25 MS. CLANCY: There's a set of class

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1 goals that the classes are working on, and the  
2 teachers individualize instruction for the  
3 students' goals.

4 MS. STEWART: Do different classes work  
5 on the same goals?

6 MS. CLANCY: It depends on the class.

7 MS. STEWART: What do you mean by that?

8 MS. CLANCY: Not all classes are working  
9 on the exact same goals.

10 MS. STEWART: Do students with different  
11 functional levels work on the same goals?

12 MS. CLANCY: That would depend on the  
13 student.

14 MS. STEWART: Now earlier in your  
15 testimony you said that J ■■■■■ receives an  
16 individual session of speech and language  
17 therapy, is that correct?

18 MS. CLANCY: Can you repeat the  
19 question.

20 MS. STEWART: During the summer, earlier  
21 in your testimony today did you say that J ■■■■■  
22 received an individual session of speech and  
23 language therapy?

24 MS. CLANCY: No.

25 MS. STEWART: So he received speech and

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1 language therapy in a group?

2 MS. CLANCY: Yes.

3 MS. STEWART: Why did he receive all of

4 his related services in a group over the summer?

5 MS. CLANCY: Over the summer the related

6 services providers discussed the students and

7 determined which students would best be served

8 for social skills and the daily living skills

9 that they're working on, whether that's most

10 appropriate in a group or individual sessions.

11 MS. STEWART: Does the related services

12 mandate for J ■■■■■, did it change between the

13 summer and the fall?

14 MS. CLANCY: I don't know his fall

15 services right now.

16 MS. STEWART: Do you know how many

17 students were in J ■■■■■'s class over the summer?

18 MS. CLANCY: Twelve.

19 MS. STEWART: Do we have a summer

20 schedule in evidence?

21 MS. SEN: No, I don't think so.

22 MS. STEWART: Do you know what academic

23 classes he took during the summer?

24 MS. CLANCY: Yes, he took a literacy

25 class or an ELA class, a theme class, which is

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1 science and social studies, and a math class.

2 MS. STEWART: You said literacy and ELA?

3 MS. CLANCY: Literacy and ELA is the

4 same class.

5 MS. STEWART: How often did the

6 literacy/ELA meet during the summer?

7 MS. CLANCY: Every day.

8 MS. STEWART: And for how long?

9 MS. CLANCY: I believe 40 to 45 minutes.

10 I don't know the exact time.

11 MS. STEWART: Did that class meet on

12 Fridays as well?

13 MS. CLANCY: Yes, they would meet before

14 the trip.

15 MS. STEWART: And how often did the math

16 class meet?

17 MS. CLANCY: Monday through Thursday.

18 MS. STEWART: And how long was the math

19 period?

20 MS. CLANCY: Also be 40 and 45 minutes.

21 MS. STEWART: I believe you also said

22 there was a theme class, is that correct?

23 MS. CLANCY: Yes.

24 MS. STEWART: What's a theme class?

25 MS. CLANCY: It's science and social

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1 studies.

2 MS. STEWART: And how often did the  
3 science and social studies classes meet over the  
4 summer?

5 MS. CLANCY: They would have classroom  
6 instruction Monday through Thursday, but the off-  
7 site education trip was related to the theme.

8 MS. STEWART: Now when the students went  
9 on the off-site trips, would it be just one class  
10 that would go or would the entire school go? How  
11 did the trips work?

12 MS. CLANCY: The whole program goes.

13 MS. STEWART: And when you say the whole  
14 program, what do you mean by that?

15 MS. CLANCY: All of the classes in the  
16 summer program at his site.

17 MS. STEWART: During the school year  
18 beginning in September do you know how often his  
19 literacy class met?

20 MS. CLANCY: I don't know right now.

21 MS. STEWART: And what about the math  
22 class, do you know how often the math class met?

23 MS. CLANCY: No, I don't know.

24 MS. STEWART: Did the theme class  
25 continue into the fall?

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1 MS. CLANCY: I don't know his current  
2 class schedule.

3 MS. STEWART: Do you work with him  
4 during the school year?

5 MS. CLANCY: I supervise his teachers.

6 MS. STEWART: Are you at the same site  
7 location?

8 MS. CLANCY: He's at a different  
9 location. I'm there once a week.

10 MS. STEWART: During the summer did you  
11 provide any services to him?

12 MS. CLANCY: No.

13 MS. STEWART: Did you observe him in the  
14 program during the summer?

15 MS. CLANCY: Yes.

16 MS. STEWART: And how often was that?

17 MS. CLANCY: Every day.

18 MS. STEWART: Just give me one second to  
19 review my notes because I believe I'm done. Now  
20 you mentioned earlier in your testimony that the  
21 students went swimming twice a week in the  
22 afternoons. Did they have any other activities  
23 that they did in the afternoons? For example, in  
24 paragraph 16 of your affidavit it says the  
25 afternoons in the summer program featured

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1 different community activities like swimming, art  
2 and movement, and an internship. Typically what  
3 did an afternoon entail for Monday through  
4 Thursday?

5 MS. CLANCY: The community activities  
6 differed by day. Thursdays he went to his  
7 internship, for example. Swimming would have  
8 been two afternoons in the week, and then we had  
9 an art teacher, a drumming teacher, and a  
10 movement teacher come in and do different arts  
11 and fitness activities in the afternoons.

12 MS. STEWART: And at what time of day  
13 would they leave for the swimming twice a week?

14 MS. CLANCY: I don't know exactly. I  
15 believe their swim time was between 1:00 and  
16 2:00.

17 MS. STEWART: And was it the same time  
18 for the internship?

19 MS. CLANCY: Generally, yes.

20 MS. STEWART: As far as those community  
21 activities during the summer, do those continue  
22 during the fall?

23 MS. CLANCY: Some of them. I don't know  
24 which specific ones.

25 MS. STEWART: Now you mentioned that you

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1 supervise his teacher, correct?

2 MS. CLANCY: Correct.

3 MS. STEWART: So how come you don't have  
4 any knowledge about the fall program?

5 MS. CLANCY: I don't know specifically  
6 his schedule.

7 MS. STEWART: It looks like we don't  
8 have schedules in evidence.

9 HEARING OFFICER NOE: I was going to ask  
10 the same thing.

11 MS. SEN: It's in the affidavit.

12 HEARING OFFICER NOE: A daily class  
13 schedule of what time he comes in, what he does  
14 for each period a day.

15 MS. SEN: They didn't have complete  
16 schedules. I can't submit something in evidence  
17 that isn't--

18 HEARING OFFICER NOE: (Interposing) I  
19 need to have one. We need to get somebody on the  
20 phone that does have it. Somebody must know what  
21 he does from the minute he comes in till the  
22 minute he leaves. This witness doesn't have that  
23 information.

24 MS. STEWART: Ms. Clancy, is there a  
25 summer program schedule that's in writing?

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1 MS. CLANCY: Yes.

2 MS. STEWART: For J [REDACTED] for this past

3 school year?

4 MS. CLANCY: Yes. For summer 2012? I

5 have his summer 2012 schedule.

6 MS. STEWART: You have it in front of

7 you.

8 MS. CLANCY: I can pull it up on my

9 computer.

10 HEARING OFFICER NOE: Why doesn't she

11 fax it over?

12 MS. STEWART: Can you fax it to us?

13 MS. CLANCY: Sure. Where do you want me

14 to fax it to?

15 (Background conversation)

16 HEARING OFFICER NOE: Before you do that

17 is there in existence a schedule for what he does

18 during the year? Does that exist?

19 MS. CLANCY: Yes.

20 HEARING OFFICER NOE: Do you have access

21 to that?

22 MS. CLANCY: I can call his program

23 coordinator.

24 HEARING OFFICER NOE: Could you also

25 have that faxed over?

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1 MS. CLANCY: Sure. Amanda, are you

2 having them testify today?

3 MS. SEN: No, because Ms. Fowler told me

4 that his fall schedule is not entirely accurate

5 so I did not put it into evidence for that

6 reason.

7 HEARING OFFICER NOE: Ask them if they

8 can fix it so that we can take a look at what he

9 does during the day, what time he gets in, how

10 long the periods are, when he has lunch, that

11 kind of thing.

12 MS. CLANCY: I have that for the summer

13 right here.

14 (Crosstalk)

15 MS. STEWART: I just found one.

16 MS. CLANCY: I'll communicate as quickly

17 as possible to her.

18 MS. STEWART: I don't think it was put

19 into evidence, but I may have had it.

20 HEARING OFFICER NOE: See if you can do

21 that and fax it over to us, okay? Do you want to

22 take a break so that you can fax that over and

23 make that call?

24 MS. CLANCY: Sure. I'll call Vicki. I

25 know that she has parent/teacher conferences

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1 today so I don't know when she'll be available.  
 2 I can fax over the summer schedule right now.  
 3 HEARING OFFICER NOE: Okay, that would  
 4 be great.  
 5 MS. CLANCY: Then you'll call me back?  
 6 (Background conversation)  
 7 HEARING OFFICER NOE: I'm still trying  
 8 to figure out the evidence that we do have in  
 9 evidence. Do you want to show her these  
 10 documents that you have? You can go off the  
 11 record.  
 12 (OFF THE RECORD)  
 13 (ON THE RECORD)  
 14 HEARING OFFICER NOE: Go back on the  
 15 record.  
 16 MS. STEWART: Ms. Clancy, I know have  
 17 the schedule in front of me.  
 18 HEARING OFFICER NOE: Which is not in  
 19 evidence.  
 20 MS. STEWART: Which is not in evidence.  
 21 I don't mind entering it into evidence as a DOE  
 22 exhibit.  
 23 HEARING OFFICER NOE: Any objection?  
 24 MS. SEN: Not to the summer schedule.  
 25 HEARING OFFICER NOE: So let's put it as

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1 District's Exhibit 27, which is summer 2012  
 2 curriculum outline it's called, one page. No  
 3 objection, right? Is that correct?  
 4 MS. SEN: Yes.  
 5 (Whereupon District's Exhibit 27 was  
 6 admitted into evidence)  
 7 HEARING OFFICER NOE: Go ahead.  
 8 MS. STEWART: Ms. Clancy, on the  
 9 schedule where it says morning meeting whole-  
 10 group community building, what does that mean?  
 11 MS. CLANCY: During the morning meeting  
 12 the group gathers to review the schedule,  
 13 participate in social skills instruction, review  
 14 current events, depending on the particular day.  
 15 MS. STEWART: And what group is that?  
 16 MS. CLANCY: J [REDACTED]'s group, J [REDACTED]'s  
 17 class.  
 18 MS. STEWART: Now on the schedule I see  
 19 two related service groups.  
 20 MS. SEN: Three.  
 21 MS. CLANCY: There's one on Monday, one  
 22 on Wednesday, and one on Thursday for J [REDACTED].  
 23 MS. STEWART: Monday, Wednesday,  
 24 Thursday, okay. Why does it say at the bottom  
 25 with the star speech, counseling, occupational

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1 therapy, and physical therapy meet in small,  
2 integrated groups?

3 MS. CLANCY: This is a document for  
4 parents. So the related service groups could be  
5 speech, counseling, OT, or PT, depending on the  
6 student's needs.

7 MS. STEWART: And do all the services  
8 meet in groups, then, during the summer?

9 MS. CLANCY: No, not necessarily.

10 MS. STEWART: Is this schedule specific  
11 to J [REDACTED], or is this a schedule for all the  
12 students in his class?

13 MS. CLANCY: This is his class schedule.

14 MS. STEWART: When you say it's his  
15 class schedule is this the schedule for all the  
16 students in his group?

17 MS. CLANCY: Yes.

18 MS. STEWART: So they all have related  
19 service group at the same time?

20 MS. CLANCY: Well, when J [REDACTED] would have  
21 speech with the speech therapist another three  
22 students may go with a counselor or an OT,  
23 depending on their related services during that  
24 period.

25 MS. STEWART: The art/movement group, is

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1 that something that takes place at the school?

2 MS. CLANCY: Depending on what he was  
3 assigned to that day, for example, the health and  
4 fitness, our movement groups, would either go to  
5 the recreation center and use the gym or go to a  
6 basketball court for movement activities, and art  
7 took place in the school building.

8 MS. STEWART: Where is the recreation  
9 center that the students use?

10 MS. CLANCY: A few blocks away from the  
11 school.

12 MS. STEWART: Is that a public  
13 recreation center?

14 MS. CLANCY: Yes, the New York City  
15 recreation center.

16 MS. STEWART: And on Fridays when it  
17 says from 12:30 until 3:00 sports and fitness,  
18 what is that?

19 MS. CLANCY: The students participate in  
20 different sports activities after the community  
21 trip.

22 MS. STEWART: Where do they participate  
23 in sports activities?

24 MS. CLANCY: It would have depended on  
25 the day, in a park or in a gym.

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1 MS. STEWART: Do the sport activities,  
 2 is it just one classroom or multiple classrooms  
 3 that participate in that?  
 4 MS. CLANCY: It would depend on the  
 5 activity.  
 6 MS. STEWART: What about for swimming,  
 7 did more than one classroom go to swim?  
 8 MS. CLANCY: Yes.  
 9 MS. STEWART: Is that the swimming pool  
 10 that you use, is that a public pool?  
 11 MS. CLANCY: Yes.  
 12 MS. STEWART: Now for lunch do the  
 13 students--first of all, where is the Cooke Center  
 14 summer academy located?  
 15 MS. CLANCY: On 29th Street.  
 16 MS. STEWART: And do the students have  
 17 lunch in the building or do they go outside for  
 18 lunch?  
 19 MS. CLANCY: During the summer academy  
 20 they eat lunch in the building.  
 21 MS. STEWART: I don't have any other  
 22 questions, Ms. Clancy.  
 23 MS. SEN: I actually only have one  
 24 question. Could you describe what community  
 25 service is on the schedule on Thursday

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1 afternoons?  
 2 MS. CLANCY: That's his internship.  
 3 MS. SEN: Okay, thank you.  
 4 HEARING OFFICER NOE: I didn't hear what  
 5 she said.  
 6 MS. CLANCY: Internship.  
 7 HEARING OFFICER NOE: Okay. I don't have  
 8 any questions.  
 9 MS. STEWART: I don't have any other  
 10 questions.  
 11 (Background conversation)  
 12 (OFF THE RECORD)  
 13 (ON THE RECORD)  
 14 HEARING OFFICER NOE: Good afternoon.  
 15 My name is Mary Noe. I'm the Hearing Officer, and  
 16 I'm here at an impartial hearing for J [REDACTED]  
 17 S [REDACTED]. Can the person on the phone identify  
 18 themselves?  
 19 MS. VICTORIA FOWLER: Hello, my name is  
 20 Victoria Fowler.  
 21 HEARING OFFICER NOE: Do you swear or  
 22 affirm to tell the truth?  
 23 MS. FOWLER: Yes.  
 24 HEARING OFFICER NOE: Could you tell us  
 25 what position you hold?

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1 MS. FOWLER: I hold the administrative  
2 coordinator position at the Cooke skills program.  
3 HEARING OFFICER NOE: Go ahead.  
4 MS. SEN: Ms. Fowler, do you have an  
5 affidavit that you signed on May 10th, 2013?  
6 MS. FOWLER: I do.  
7 MS. SEN: And do you swear that when you  
8 signed the affidavit that everything in it was  
9 true and that it is currently true?  
10 MS. FOWLER: Yes.  
11 MS. SEN: Okay.  
12 MS. STEWART: Should I start?  
13 HEARING OFFICER NOE: Yes, go right  
14 ahead. I'm sorry.  
15 MS. STEWART: Ms. Fowler, did you review  
16 any documents in preparation of r your testimony  
17 today?  
18 MS. FOWLER: I reviewed my affidavit.  
19 MS. STEWART: And drafting your  
20 affidavit did you review any documents to assist  
21 you?  
22 MS. FOWLER: I reviewed J [REDACTED]'s progress  
23 report.  
24 MS. STEWART: Which progress report did  
25 you review?

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1 MS. FOWLER: Trimester two from this  
2 year and also trimester one from this year.  
3 MS. STEWART: Did you review the  
4 affidavits of any other Cooke Center employees?  
5 MS. FOWLER: No.  
6 MS. STEWART: Now in your affidavit you  
7 refer to the fact that J [REDACTED] has physical and  
8 verbal outbursts, is that correct?  
9 MS. FOWLER: I believe I said that he--  
10 (Crosstalk)  
11 MS. STEWART: That's paragraph ten if  
12 you need to look at it. When you say he has  
13 outbursts, including physical and verbal  
14 expressions of anger, what sort of--first of all,  
15 how long have you known J [REDACTED]?  
16 MS. FOWLER: I've been working with him  
17 since September of 2012.  
18 MS. STEWART: So this is your first year  
19 working with him?  
20 MS. FOWLER: Yes.  
21 MS. STEWART: Do you provide any  
22 services to him?  
23 MS. FOWLER: Yes. Would you like me to  
24 elaborate?  
25 MS. STEWART: Yes, you can go ahead.

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1 MS. FOWLER: I see him twice a week in  
2 class for 50 minutes each time. I run a  
3 vocational skills class and an internship class  
4 forum with him.

5 MS. STEWART: Did you say 15 or 50?

6 MS. FOWLER: 5-0.

7 HEARING OFFICER NOE: How often do you  
8 do that?

9 MS. FOWLER: Twice a week, so for two  
10 50-minute periods a week I'm in class with him,  
11 but I interact with him daily informally.

12 HEARING OFFICER NOE: Just wait because  
13 I want to see if I can figure out this schedule.  
14 What time do you do this?

15 MS. FOWLER: When do I see him?

16 HEARING OFFICER NOE: Yes, the 50-minute  
17 period.

18 MS. FOWLER: On Tuesdays and Thursdays.

19 HEARING OFFICER NOE: At what time?

20 MS. FOWLER: I see him fourth period.

21 HEARING OFFICER NOE: Which is what  
22 time?

23 MS. FOWLER: 10:55 to 11:45.

24 HEARING OFFICER NOE: Okay, sorry about  
25 that. Thank you.

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1 MS. STEWART: No problem. I just want to  
2 take that down. When you say that in your  
3 affidavit that he has physical expressions of  
4 anger, can you describe the physical expressions  
5 of anger?

6 MS. FOWLER: Sure, they're mostly  
7 gestural. He'll waive his arms in the air and  
8 get physically agitated in that you can see in  
9 his body movement that he's frustrated and angry.

10 MS. STEWART: And how often have you  
11 observed that?

12 MS. FOWLER: I'd be estimating right now  
13 but maybe a couple of times a month.

14 MS. STEWART: And as far as the verbal  
15 expressions of anger, can you explain what you  
16 mean by that?

17 MS. FOWLER: Sure. As I mentioned his  
18 frustration tolerance is something he's working  
19 on building. So when he becomes frustrated he  
20 uses an aggressive tone of voice and will often  
21 make statements expressing his frustration that  
22 are socially inappropriate.

23 MS. STEWART: And how often are you  
24 seeing that sort of behavior?

25 MS. FOWLER: Daily.

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1 MS. STEWART: Now you just mentioned  
 2 that he has situations where he has issues with  
 3 frustration and when he gets frustrated he has  
 4 the verbal expressions of anger, correct?  
 5 MS. FOWLER: Um hum.  
 6 MS. STEWART: So what situations are  
 7 frustrating for him that you've observed?  
 8 MS. FOWLER: One common frustrating  
 9 experience is if his school bus is running late  
 10 and if he arrives here late for the day it takes  
 11 him quite a bit of time to calm down and to work  
 12 through his frustration over the fact that he's  
 13 arrived late to school. So he'll often  
 14 conference with our school psychologist and spend  
 15 some time calming down before entering the  
 16 classroom.  
 17 MS. STEWART: When you see him for--I  
 18 believe you described it as a vocational class,  
 19 is that correct?  
 20 MS. FOWLER: Yes.  
 21 MS. STEWART: How many students are in  
 22 that class?  
 23 MS. FOWLER: There are five total, four  
 24 others in addition to [REDACTED].  
 25 MS. STEWART: Is he with those same

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1 students throughout the school day?  
 2 MS. FOWLER: Yes.  
 3 MS. STEWART: How many students attend  
 4 Cooke Center Academy?  
 5 MS. FOWLER: Cooke Center Academy or the  
 6 Cooke skills program location?  
 7 MS. STEWART: Which program does [REDACTED]  
 8 attend?  
 9 MS. FOWLER: The Cooke Center skills  
 10 program location. So there are 34 students here.  
 11 MS. STEWART: Is the Cooke Center  
 12 Academy located at a different location?  
 13 MS. FOWLER: Yes, they're located at 60  
 14 McDougal Street.  
 15 MS. STEWART: Now do any of the other  
 16 students in his class experience the physical or  
 17 verbal expressions of anger?  
 18 MS. FOWLER: Yes. As I had mentioned  
 19 before the physical expression is contained to  
 20 gestures and body movements.  
 21 MS. STEWART: In your affidavit you talk  
 22 about a community inclusion assistant. Who is  
 23 that person?  
 24 MS. FOWLER: Magolley Montada  
 25 (phonetic).

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1 MS. STEWART: The community inclusion  
 2 assistant, she's not a certified teacher,  
 3 correct?  
 4 MS. FOWLER: No, but she has 12 years of  
 5 experience working with this population.  
 6 MS. STEWART: And what kind of  
 7 experience does she have? What was her job  
 8 title?  
 9 MS. FOWLER: She worked as a  
 10 paraprofessional and also a community inclusion  
 11 assistant for those 12 years.  
 12 MS. STEWART: What's the staffing ratio  
 13 of your class with [REDACTED]?  
 14 MS. FOWLER: When I have him in class,  
 15 there's 5:1, either a teacher or counselor and  
 16 five students.  
 17 MS. STEWART: What do you mean by  
 18 either a teacher or counselor and five students?  
 19 MS. FOWLER: I'm a counselor by  
 20 background so when I have him in class it's a  
 21 counselor to student ratio. When the academic  
 22 teachers have him in class it's teacher to  
 23 student. That's what I meant.  
 24 MS. STEWART: Why is he in a class of  
 25 five?

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1 MS. FOWLER: This is the appropriate  
 2 group size for [REDACTED] to work on the goals that he  
 3 needs to work on to transition into adulthood.  
 4 MS. STEWART: And how was that  
 5 determined that it was the appropriate group  
 6 size?  
 7 MS. FOWLER: We determined it based on  
 8 his academic needs, his social needs, and what  
 9 worked best with all our service providers and  
 10 teachers.  
 11 MS. STEWART: And that Cooke skills  
 12 program, do you have any classes that are larger  
 13 than five?  
 14 MS. FOWLER: We have one class of seven  
 15 students. The other classes are all four or  
 16 five. That's a group size.  
 17 MS. STEWART: What do you mean by that's  
 18 a group size?  
 19 MS. FOWLER: The cohorts that travel  
 20 through the schedule together.  
 21 MS. STEWART: Do you know what the size  
 22 of his classroom was during the summer?  
 23 MS. FOWLER: I do not offhand know that.  
 24 MS. STEWART: Now your vocational class,  
 25 is that considered counseling?

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1 MS. FOWLER: We consider it part of the  
2 transition program, yes, so I'm a counselor by  
3 background so it's viewed as a counseling class.

4 MS. STEWART: How often does J [REDACTED]  
5 receive counseling during the school year?

6 MS. FOWLER: He receives individual  
7 counseling with our school psychologist once a  
8 week, and then he receives group counseling with  
9 the same school psychologist twice a week, and  
10 then he meets with me twice a week for a  
11 vocational-based counseling.

12 MS. STEWART: So he receives one  
13 individual counseling and two group-based  
14 counseling.

15 MS. FOWLER: With the school  
16 psychologist, and then also two sessions with me,  
17 two classes with me.

18 MS. STEWART: His group of counseling,  
19 how many students are in that group?

20 MS. FOWLER: Also five.

21 MS. STEWART: And his counseling group,  
22 are those the same students that are in his  
23 cohort as you described it earlier?

24 MS. FOWLER: Yes, except for the class  
25 that he has the men's forum class is only males.

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1 So the students in that class are just the male  
2 members of the cohort.

3 MS. STEWART: So men's forum class,  
4 that's considered counseling?

5 MS. FOWLER: That's a group counseling  
6 class, yes.

7 MS. STEWART: What is men's forum?

8 MS. FOWLER: It's a group counseling  
9 class focused on young adult issues where the  
10 male members of our program meet with our school  
11 psychologist to discuss young adult issues.

12 MS. STEWART: Does J [REDACTED] have an  
13 internship?

14 MS. FOWLER: Yes.

15 MS. STEWART: When did he begin his  
16 internship for the school year?

17 MS. FOWLER: I believe he began in  
18 October.

19 MS. STEWART: And where is his  
20 internship?

21 MS. FOWLER: His internship is at the  
22 Cooke Center Grammar School working in their  
23 kitchen preparing snacks for the younger students  
24 in the Grammar School and delivering those  
25 snacks.

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1 MS. STEWART: And when does he go to  
2 that internship?  
3 MS. FOWLER: He goes on Tuesdays and  
4 Thursdays.  
5 MS. STEWART: And how long is he there?  
6 MS. FOWLER: He's there for about I  
7 think two hours, an hour and a half, two hours,  
8 depending on how long the process takes.  
9 MS. STEWART: So an hour and a half, two  
10 hours, twice a week.  
11 MS. FOWLER: Yes.  
12 MS. STEWART: Is that in the afternoon?  
13 MS. FOWLER: No, it's in the morning.  
14 MS. STEWART: How does he travel there?  
15 MS. FOWLER: He travels there with Ms.  
16 Magolley Montada, his community inclusion  
17 assistant. They take the subway.  
18 MS. STEWART: So the hour and a half to  
19 two hours that he spends there, does that include  
20 the travel time?  
21 MS. FOWLER: No.  
22 MS. STEWART: So approximately how long  
23 is he at the internship, including the travel  
24 time?  
25 MS. FOWLER: Two and a half hours.

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1 HEARING OFFICER NOE: What time does he  
2 leave in the morning?  
3 MS. FOWLER: He leaves about 8:40 or  
4 8:30.  
5 HEARING OFFICER NOE: Okay.  
6 MS. STEWART: Now aside from--first of  
7 all, how was that internship chosen for him?  
8 MS. FOWLER: [REDACTED] had met with our  
9 internship and career manager during his time at  
10 Cooke Center Academy and spoken about his career  
11 goals and interests, and he expressed interest in  
12 food service as well as working with children.  
13 So this internship gives him a chance to do both.  
14 MS. STEWART: Do you know what sort of  
15 internship he held over the summer? Are you  
16 familiar with that?  
17 MS. FOWLER: I am not, sorry.  
18 MS. STEWART: So you said he expressed  
19 an interest in food service and working with  
20 children. Was that in a vocational assessment?  
21 MS. FOWLER: I'm not sure exactly the  
22 assessment that was used, but I know that was  
23 discussed with our career and internship manager.  
24 MS. STEWART: And when was that done?  
25 When was that discussion?

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1 MS. FOWLER: I believe--I can't  
2 speculate. I'm sorry.

3 MS. STEWART: Was it during the  
4 2011/2012 school year?

5 MS. FOWLER: I can't speak to that  
6 exactly. I'm not comfortable answering that.

7 MS. STEWART: So how do you know that he  
8 expressed an interest in food service and working  
9 with children?

10 MS. FOWLER: He has told me that  
11 himself, and then also in my conversations with  
12 the internship and career manager. I'm just not  
13 exactly sure when.

14 MS. STEWART: You're not sure when you  
15 had the conversation?

16 MS. FOWLER: No, I'm not sure when they  
17 had the conversation, [REDACTED] and the internship  
18 and career manager.

19 MS. STEWART: Okay. Aside from  
20 counseling does he receive any other related  
21 services?

22 MS. FOWLER: He does. He receives  
23 occupational therapy and speech and language  
24 therapy.

25 MS. STEWART: Why does he receive

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1 occupational therapy?

2 MS. FOWLER: As part of our curriculum  
3 to prepare students for transition into  
4 adulthood. The curriculum addresses a lot of the  
5 transition needs of our students.

6 MS. STEWART: How much occupational  
7 therapy does he receive?

8 MS. FOWLER: Three periods a week.

9 MS. STEWART: Is that in a group?

10 MS. FOWLER: Yes.

11 HEARING OFFICER NOE: A group of how  
12 many?

13 MS. STEWART: A group of how many?

14 MS. FOWLER: Typically four to five  
15 students.

16 MS. STEWART: And what about speech  
17 therapy, how often does he receive speech  
18 therapy?

19 MS. FOWLER: Three 50-minute periods a  
20 week.

21 MS. STEWART: And is that also in a  
22 group?

23 MS. FOWLER: Yes.

24 MS. STEWART: All three sessions?

25 MS. FOWLER: Yes.

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1 HEARING OFFICER NOE: Do you know the  
2 time and the days that these sessions are  
3 provided?  
4 MS. FOWLER: Yes.  
5 HEARING OFFICER NOE: Could you give  
6 them to me, please?  
7 MS. FOWLER: Sure. The occupational  
8 therapist works with J [REDACTED] for adaptive skills  
9 class on Mondays from 10:55 to 11:45.  
10 HEARING OFFICER NOE: Okay.  
11 MS. FOWLER: On Tuesday and Thursday  
12 from 12:25 to 1:15.  
13 HEARING OFFICER NOE: And the speech and  
14 language?  
15 MS. FOWLER: Speech and language on  
16 Tuesday and Thursdays from 1:15 to 2:05 and on  
17 Fridays from 10:00 to 10:50.  
18 HEARING OFFICER NOE: Okay, go ahead.  
19 MS. STEWART: Now, Ms. Fowler, as far as  
20 the schedule that you were just describing to us,  
21 is that written down somewhere?  
22 MS. FOWLER: Yes.  
23 MS. STEWART: Do you have that schedule  
24 with you?  
25 MS. FOWLER: I have access to it.

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1 HEARING OFFICER NOE: Let's see if we  
2 can get that.  
3 MS. STEWART: Okay, I can continue or--  
4 HEARING OFFICER NOE: (Interposing)  
5 Let's ask her if she could fax it over.  
6 MS. SEN: I will object to it going into  
7 evidence, though, because I'd have to recall  
8 another witness to testify about it.  
9 HEARING OFFICER NOE: Okay, that's fine.  
10 We're going to get a copy of it. I need a copy  
11 of his schedule. I need to see what the student  
12 is doing during the course of the day.  
13 (Background conversation)  
14 (OFF THE RECORD)  
15 (ON THE RECORD)  
16 HEARING OFFICER NOE: Let's go back on  
17 the record. Do we still have the witness here?  
18 MS. FOWLER: Yes.  
19 HEARING OFFICER NOE: Thank you for  
20 being patient. The machine was jammed. So we  
21 had to do a little work there. Do you want to  
22 continue?  
23 MS. STEWART: Ms. Fowler, just before we  
24 went off the record you were specifically  
25 mentioning the times of occupational therapy and

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1 speech and language therapy. That's different  
2 from what's on the schedule that you just sent  
3 us, correct?

4 MS. FOWLER: It's different? Is that  
5 what you're saying?

6 MS. STEWART: Yes.

7 MS. FOWLER: No, it's not different.  
8 It's the same as what I just said.

9 HEARING OFFICER NOE: Well, you said  
10 that he receives occupational therapy on Monday  
11 from 10:55 to 1:45.

12 MS. FOWLER: 11:45. I said 10:55 to  
13 11:45.

14 HEARING OFFICER NOE: And on the  
15 schedule it says adaptive skills. Is that  
16 occupational therapy?

17 MS. FOWLER: Yes, and I had said that  
18 before that occupational therapy is referred to  
19 as adaptive skills.

20 HEARING OFFICER NOE: Then Tuesday and  
21 Thursday from 12:25 to 1:15.

22 MS. FOWLER: Yes, so if you look at the  
23 orange, I don't know if it came--

24 HEARING OFFICER NOE: (Interposing) See,  
25 adaptive skills is what they call occupational

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1 therapy.

2 MS. STEWART: Okay.

3 HEARING OFFICER NOE: Then speech and  
4 language Tuesday and Thursday from 1:15--

5 MS. FOWLER: (Interposing) It's called  
6 communication. That's in my affidavit as well.

7 HEARING OFFICER NOE: Tuesday and  
8 Thursday. Oh, it's in the same block. Oh, I  
9 see, right, communication and speech and  
10 language. Okay.

11 MS. STEWART: Ms. Fowler, to your  
12 knowledge is this schedule correct?

13 MS. SEN: Before we talk about the  
14 schedule it's not in evidence yet.

15 HEARING OFFICER NOE: No, she's just  
16 asking her. You can mark it for identification  
17 as District's 28 for ID.

18 MS. STEWART: Right.

19 MS. SEN: I am objecting to it.

20 HEARING OFFICER NOE: Well, it's not in  
21 evidence. You can object to a question, but you  
22 can't object to something that's only marked for  
23 identification. You can mark anything for  
24 identification. Go ahead.

25 MS. STEWART: I'm just asking to your

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1 knowledge is this schedule correct?

2 MS. FOWLER: Yes.

3 MS. STEWART: And how do you know that?

4 MS. FOWLER: I'm not really clear on the

5 question.

6 MS. STEWART: How do you know that this

7 is his schedule for the school year?

8 MS. FOWLER: I've overseen the schedules

9 for all the students, and this is what we

10 established at the beginning of the year. The

11 only thing that might be different, and I

12 wouldn't be able to speak to this exactly, is

13 there might be one math and ELA that was swapped

14 because they're taught by the same teacher. So

15 she may have swapped the timing of that. I can't

16 speak to that specifically right now.

17 MS. STEWART: Before we went off the

18 record I was going to ask you does he spend any

19 time in the community aside from his internship

20 which meets twice a week.

21 MS. FOWLER: Yes.

22 MS. STEWART: What other time does he

23 spend in the community during the week?

24 MS. FOWLER: He spends times once a week

25 at the Chelsea Recreation Center for his gym

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1 time. He also spends time in the community on

2 Wednesday and Friday afternoons as explained in

3 my affidavit.

4 MS. STEWART: Where is that in your

5 affidavit, do you know?

6 MS. FOWLER: I'd have to take a second

7 to find it--19.

8 MS. STEWART: Okay. The Chelsea

9 Recreation Center, is that a public gym?

10 MS. FOWLER: It's a community recreation

11 center, yes.

12 MS. STEWART: And how close is that to

13 the school?

14 MS. FOWLER: It's located on 25th Street

15 and Ninth Avenue. So it's about four blocks and

16 one avenue.

17 MS. STEWART: So the students walk

18 there?

19 MS. FOWLER: Yes.

20 MS. STEWART: The occupational therapy

21 class that you described as adaptive skills, do

22 all the students at the skills program

23 participate in that?

24 MS. FOWLER: Yes. All the students in

25 the skills program have occupational therapy

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1 three times a week.

2 MS. STEWART: Do all the students in the  
3 skills program also speech and language twice a  
4 week?

5 MS. FOWLER: Three times a week. [REDACTED]  
6 has it three times a week.

7 MS. STEWART: In paragraph five of your  
8 affidavit you mentioned that the skills program  
9 is part of Cooke Center Academy, and in the  
10 second sentence you say we focus on transition  
11 skills. What do you mean by transition skills?

12 MS. FOWLER: Skills needed to transition  
13 into the next phase of their young adult life,  
14 which is different depending on the student and  
15 their individual transition plan.

16 MS. STEWART: Now for the students that  
17 are 18 to 21 at Cooke do you offer any other  
18 programs aside from this program at Cooke Skills  
19 Academy?

20 MS. FOWLER: I'm not clear on what your  
21 question is.

22 MS. STEWART: During the 2011/2012  
23 school year [REDACTED] was at Cooke Center Academy,  
24 correct?

25 MS. FOWLER: Correct.

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1 MS. STEWART: Why didn't he continue at  
2 the Cooke Center Academy for 2012/2013?

3 MS. FOWLER: He had completed four years  
4 at Cooke Center Academy to my knowledge, and the  
5 transition program was the appropriate next step.

6 MS. STEWART: Could he have remained at  
7 the Cooke Center Academy?

8 MS. FOWLER: I wasn't involved in that  
9 decision.

10 MS. STEWART: What's the difference  
11 between the Cooke Center Academy program and the  
12 Cooke skills program?

13 MS. FOWLER: Our program serves students  
14 ages 18 to 21. So this site, what's called the  
15 Cooke Skills Program serves students ages 18 to  
16 21, whereas the Cooke Center Academy serves  
17 students ages 18 and younger.

18 MS. STEWART: Is there a difference in  
19 the curriculum that's offered?

20 MS. FOWLER: The curriculum here at  
21 Skills is tailored to meet the transition needs  
22 of the students.

23 MS. STEWART: And the Cooke Center  
24 Academy program is tailored to meet what?

25 MS. FOWLER: I can't speak to the

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1 details of the curriculum of the Cooke Center  
2 Academy as a whole program.

3 MS. STEWART: Do 18 to 21 year-olds  
4 actually attend the Cooke Center Academy?

5 MS. FOWLER: I'm not positive, but--  
6 Cooke Center Skills Program exists for students  
7 that are ages 18 to 21. We're an off-site  
8 location of the Cooke Center Academy. So I'm not  
9 positive that there aren't any students--I'm not  
10 going to speculate. I don't know exactly what  
11 you're asking. I believe I've answered your  
12 question multiple times.

13 MS. STEWART: My question was whether  
14 students that are 18 to 21 can attend the Cooke  
15 Center Academy.

16 MS. FOWLER: I can't answer that  
17 question.

18 MS. STEWART: I don't have anything  
19 else, Ms. Fowler.

20 MS. FOWLER: Okay.

21 HEARING OFFICER NOE: Do you have  
22 anything?

23 MS. SEN: Yeah.

24 HEARING OFFICER NOE: Go ahead.

25 MS. SEN: Ms. Fowler, is J [REDACTED]'s

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1 internship on this schedule?

2 MS. FOWLER: No.

3 MS. SEN: Could you tell me what time  
4 his internship takes place?

5 MS. FOWLER: What time he's scheduled to  
6 work or what time he's apart from Skills?

7 MS. SEN: Both.

8 MS. FOWLER: He's scheduled to work from  
9 9:00 to 10:30, and he departs from Skills at  
10 8:30.

11 HEARING OFFICER NOE: And he what?

12 MS. SEN: He leaves Skills at 8:30.

13 HEARING OFFICER NOE: He's scheduled to  
14 work from 9:00 to 10:30, is that what she said?

15 MS. SEN: Yes.

16 HEARING OFFICER NOE: Then what was the  
17 second part of it?

18 MS. SEN: That he leaves Skills to go to  
19 the internship at 8:30.

20 HEARING OFFICER NOE: So he leaves at  
21 8:30, and he returns at 10:30, is that correct?

22 MS. FOWLER: No, he works until 10:30.  
23 He returns sometime between 10:30 and 11:00. The  
24 time varies based on how long it took him to  
25 complete his tasks.

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1 HEARING OFFICER NOE: So he leaves at  
2 8:30, and he comes back either at 10:30 or 11:00  
3 because of travel time, is that what you're  
4 saying?

5 MS. FOWLER: Yes.

6 HEARING OFFICER NOE: What days of the  
7 week is that?

8 MS. FOWLER: Tuesday and Thursday.

9 HEARING OFFICER NOE: On this schedule  
10 they have art, math, and no barriers on Tuesday  
11 and Thursday.

12 MS. FOWLER: Right. This schedule was  
13 established prior to J [REDACTED]'s internship schedule  
14 getting set up. This schedule was established  
15 the first day of school, whereas his internship  
16 didn't start until October.

17 HEARING OFFICER NOE: So every Tuesday  
18 and Thursday from approximately 8:30 to 11:00 he  
19 was not in the school. He was at the internship,  
20 which was at the other school, is that correct?

21 MS. FOWLER: Yes. The time he arrives  
22 back at Skills did vary, though, depending on how  
23 long it took him to complete the tasks that day.

24 HEARING OFFICER NOE: So what happened  
25 to those classes that were slotted for Tuesday

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1 and Thursday on the schedule?

2 MS. FOWLER: So he conferences  
3 individually with Ms. Hibbard, which she can  
4 speak more about to make up any work that he had  
5 missed. He also has lunch with Mr. Frank, our  
6 school psychologist, to discuss anything he has  
7 missed in that class. Then he has an opportunity  
8 to participate in clubs on Friday to explore art.

9 HEARING OFFICER NOE: Okay, go ahead.  
10 Keep going.

11 MS. STEWART: I have one follow up  
12 question. You said just now that he participates  
13 in clubs on Friday. What do you mean by clubs?

14 MS. FOWLER: So as you can see on the  
15 schedule it says clubs and leisure trips on  
16 Friday, and as I had mentioned in my affidavit  
17 that on Fridays the students on a rotating basis  
18 are expected to plan leisure trips and work out  
19 all the logistics involved in planning those  
20 trips. Once a month instead of planning those  
21 trips we have clubs, which are enrichment  
22 activities that the students get to choose which  
23 club they want to participate in.

24 MS. STEWART: So once a month the  
25 students participate in clubs, and then the other

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1 three Fridays during the month they do leisure  
 2 trips?  
 3 MS. FOWLER: Yes, which are prepared and  
 4 organized by the students.  
 5 MS. STEWART: I don't have anything  
 6 else.  
 7 HEARING OFFICER NOE: I have a question  
 8 for you. This schedule that we have in front of  
 9 us, besides the Tuesday and Thursday from  
 10 approximately 8:30 to 10:30 or 8:30 to 11:00 is  
 11 this schedule accurate?  
 12 MS. FOWLER: Yes, the one thing that I  
 13 mentioned before is that there may have been a  
 14 swap between the timing of an ELA and a math  
 15 class that I'm not positive of that Ms. Hibbard  
 16 could speak to. Other than that it is accurate,  
 17 yes.  
 18 HEARING OFFICER NOE: So just Tuesday  
 19 and Thursday have been kind of deleted for the  
 20 internship, correct?  
 21 MS. FOWLER: I'm sorry, can you repeat  
 22 that?  
 23 HEARING OFFICER NOE: I said Tuesday and  
 24 Thursday has been deleted for the internship.  
 25 MS. FOWLER: The first three periods or

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1 part of third.  
 2 HEARING OFFICER NOE: Right.  
 3 MS. FOWLER: So basically part of first  
 4 period and part of third period still exist.  
 5 It's just that middle chunk.  
 6 HEARING OFFICER NOE: Okay, I don't have  
 7 any other questions. Anybody else have any other  
 8 questions?  
 9 MS. STEWART: No.  
 10 (Background conversation)  
 11 HEARING OFFICER NOE: I'm going to take  
 12 this into evidence as Hearing Officer's Exhibit  
 13 1.  
 14 (Whereupon IHO Exhibit 1 was admitted  
 15 into evidence)  
 16 HEARING OFFICER NOE: Who is next? Go  
 17 off the record.  
 18 (OFF THE RECORD)  
 19 (ON THE RECORD)  
 20 HEARING OFFICER NOE: Good afternoon.  
 21 This is Hearing Officer Mary Noe. I'm here in an  
 22 impartial hearing for J [REDACTED] S [REDACTED]. Can you  
 23 identify who's coming in via the phone?  
 24 MS. SALLY ORD: Yes, it's Sally Ord, O-  
 25 R-D.

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1 HEARING OFFICER NOE: Do you swear or  
 2 affirm to tell the truth?  
 3 MS. ORD: Yes.  
 4 HEARING OFFICER NOE: And what is your  
 5 position?  
 6 MS. ORD: I'm consulting teacher at  
 7 Cooke Center for learning and development.  
 8 HEARING OFFICER NOE: Did you want to  
 9 put her affidavit in evidence? I don't know why  
 10 I haven't marked in evidence already.  
 11 MS. SEN: Ms. Ord, did you sign an  
 12 affidavit on May 10th, 2013?  
 13 MS. ORD: Yes.  
 14 MS. SEN: And do you swear that  
 15 everything in this affidavit is true and was true  
 16 when you signed it?  
 17 MS. ORD: Yes.  
 18 MS. SEN: Okay. The Department of  
 19 Education attorney has questions for you.  
 20 HEARING OFFICER NOE: Do you have any  
 21 objection to that going into evidence?  
 22 MS. STEWART: No.  
 23 HEARING OFFICER NOE: M. Go right  
 24 ahead.  
 25 (Whereupon parent's Exhibit M was

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1 admitted into evidence)  
 2 MS. STEWART: Ms. Ord, did you review  
 3 any documents in preparation for your testimony  
 4 today?  
 5 MS. ORD: I'm sorry, could you speak up  
 6 a little bit? I'm having a little bit of  
 7 difficulty hearing you.  
 8 MS. STEWART: Did you review any  
 9 documents in preparation for your testimony  
 10 today?  
 11 MS. ORD: Yes.  
 12 MS. STEWART: What did you review?  
 13 MS. ORD: Just the affidavit, the IEP,  
 14 and some of the discussion documents.  
 15 MS. STEWART: What IEP did you review?  
 16 MS. ORD: The IEP that was created at  
 17 the 2012 meeting.  
 18 MS. STEWART: What's the date of that  
 19 IEP?  
 20 MS. ORD: The date is--there's a  
 21 projected implementation date.  
 22 MS. STEWART: So you have the IEP in  
 23 front of you?  
 24 MS. ORD: Yes.  
 25 MS. STEWART: And when you say you

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1 reviewed discussion documents, what discussion  
2 documents did you review?

3 MS. ORD: The discussion documents I  
4 reviewed were the documents provided from the  
5 team at Cooke or me when attending the IEP  
6 meeting.

7 MS. STEWART: Do you have those  
8 discussion documents in front of you?

9 MS. ORD: I have them on my desk, but  
10 I'm not looking at them.

11 MS. STEWART: Okay. I was going to ask  
12 you questions about them. Have you reviewed any  
13 other affidavits of Cooke Center employees?

14 MS. ORD: No.

15 MS. STEWART: I have at least identified  
16 as Exhibit 7, I'm not sure if it's in evidence, a  
17 document titled IEP annual review discussion  
18 document-speech and language. Do you have that  
19 document in front of you?

20 MS. ORD: Do I need to refer to it now?

21 MS. STEWART: Yes.

22 MS. ORD: Sorry, let me just get that.

23 MS. STEWART: Do you have paper copies?

24 MS. ORD: I have paper copies, yes.

25 MS. STEWART: I'm going to ask you about

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1 all of them.

2 MS. ORD: Let me just get them because I  
3 put them on the side. So you're going to be  
4 referring to the ELA, is that correct? I just  
5 want to make sure I have all the appropriate  
6 documents in front of me.

7 MS. STEWART: I believe it's speech and  
8 language, ELA, math, and counseling.

9 MS. ORD: So speech and language, math,  
10 and--yes.

11 MS. STEWART: So we have identified as  
12 Exhibit 7 that document titled IEP annual review  
13 discussion document-speech and language. Do you  
14 have that document in front of you?

15 MS. ORD: Yes.

16 MS. STEWART: Can you explain what this  
17 is?

18 MS. ORD: The particular document or all  
19 of the discussion documents?

20 MS. STEWART: Just this particular  
21 document.

22 MS. ORD: This is a document that is  
23 provided to me by--we refer to J [REDACTED] as C [REDACTED].  
24 So if I may continue to refer to him in that way.

25 MS. STEWART: Okay.

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1 MS. ORD: Is that okay?

2 MS. STEWART: That's fine with me.

3 MS. ORD: So it's a discussion document

4 that's provided to me by the speech and language

5 therapist, G■■■■'s speech and language therapy,

6 Ms. Fernandez. It's provided as part of our

7 liaison to me so that then I have that for

8 reference at the IEP meeting.

9 MS. STEWART: So did you take this

10 document to the IEP meeting?

11 MS. ORD: I did not take a hard copy. I

12 had the document on my computer because it's an

13 internal discussion document.

14 MS. STEWART: Who created this document?

15 MS. ORD: G■■■■'s speech and language

16 therapist.

17 MS. STEWART: Did you provide a copy of

18 this to the parent?

19 MS. ORD: No, it's a discussion

20 document. As it's an internal document, as I

21 said, it's internal. It's for my professional

22 usage. We provide progress reports to the

23 parents.

24 MS. STEWART: You were fading at the

25 end. Can you keep your voice up?

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1 MS. ORD: Certainly. I'm sorry.

2 MS. STEWART: So did you discuss the

3 information within this document at the IEP

4 meeting?

5 MS. ORD: Yes, I presented the

6 information on behalf of Ms. Fernandez.

7 MS. STEWART: And who asked you to

8 present it on behalf of Ms. Fernandez?

9 MS. ORD: I don't think I was

10 specifically requested to provide the information

11 on behalf of Ms. Fernandez.

12 MS. STEWART: Now when it says proposed

13 mandate, who proposed that speech and language

14 mandate?

15 MS. ORD: It was proposed by Ms.

16 Fernandez and within the context of our program.

17 MS. STEWART: What do you mean within

18 the context of your program?

19 MS. ORD: With regard to the level of

20 service that G■■■■ was receiving and would

21 continue to receive as part of the overall

22 program. It doesn't speak to the whole of his

23 speech and language provision.

24 MS. STEWART: I'd just like to move this

25 document into evidence.

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1 HEARING OFFICER NOE: That is Exhibit 7?  
 2 Any objection?  
 3 MS. SEN: No.  
 4 HEARING OFFICER NOE: Okay, 7 is in  
 5 evidence. Go ahead.  
 6 (Whereupon DOE Exhibit 7 was admitted  
 7 into evidence)  
 8 MS. STEWART: Moving on to a document we  
 9 have identified as Exhibit 8 we have it titled  
 10 IEP annual review discussion document-academic.  
 11 Do you have that there?  
 12 MS. ORD: Are you looking at a specific-  
 13 -  
 14 MS. STEWART: (Interposing) It says  
 15 language arts and social studies.  
 16 MS. ORD: Yes, I do.  
 17 MS. STEWART: Can you explain what this  
 18 document is?  
 19 MS. ORD: It's a similar nature to the  
 20 previous that we spoke to. It's a document  
 21 created by G■■■■'s then ELA and social studies  
 22 teacher with them providing information on his  
 23 performance in class and capturing some of the  
 24 formal and informal assessments completed within  
 25 the class setting.

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1 MS. STEWART: Did you present the  
 2 information within this document to the team at  
 3 the IEP meeting?  
 4 MS. ORD: Yes.  
 5 MS. STEWART: And how did you do that?  
 6 MS. ORD: I presented it verbally.  
 7 MS. STEWART: But you didn't provide the  
 8 team a written copy of this document?  
 9 MS. ORD: No, the team was provided with  
 10 the progress report. Again, this is an internal  
 11 document, which is provided by one of the members  
 12 of our collaborative team, in this case Ms.  
 13 Sullivan, G■■■■'s ELA teacher. So again it's an  
 14 internal document.  
 15 MS. STEWART: This document is three  
 16 pages. During the IEP meeting you go through all  
 17 three pages of this document, or did you go  
 18 through all three pages of this document?  
 19 MS. ORD: If there is something perhaps  
 20 that has been covered previously, then I may omit  
 21 that. For example, if there was something that  
 22 was repeating a management need I will go through  
 23 it because it does give information about what  
 24 G■■■■ was currently working on. So, yes.  
 25 MS. STEWART: And I don't know if we

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1 have this in evidence, but I'd like to put it in  
 2 evidence, Exhibit 8.  
 3 HEARING OFFICER NOE: Any objection?  
 4 MS. SEN: No.  
 5 HEARING OFFICER NOE: 8 in evidence.  
 6 (Whereupon DOE Exhibit 8 was admitted  
 7 into evidence)  
 8 MS. STEWART: And just to save time we  
 9 also have a document titled IEP annual review  
 10 discussion document-academic, and it's for math,  
 11 and then IEP annual review discussion document  
 12 for counseling.  
 13 MS. ORD: Yes.  
 14 MS. STEWART: Do you have both of those  
 15 documents with you?  
 16 MS. ORD: Yes.  
 17 MS. STEWART: Can you explain what those  
 18 documents are?  
 19 MS. ORD: Again, speaking to the  
 20 previous documents, they are internal documents  
 21 that are created by the subject specialists or  
 22 the related service provider for myself for use  
 23 at the IEP meeting.  
 24 MS. STEWART: So at the IEP meeting for  
 25 J [REDACTED], which was on May 22nd, 2012, we have it in

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1 evidence as Exhibit 3. Did you also discuss  
 2 those documents at the IEP meeting?  
 3 MS. ORD: Again, I presented the  
 4 information within the documents verbally at the  
 5 meeting, yes.  
 6 MS. STEWART: Do you remember how long  
 7 this meeting lasted?  
 8 MS. ORD: The meeting, I can't speak to  
 9 the exact time, but I would approximate it took  
 10 about two hours. That tends to be the length of  
 11 these meetings.  
 12 MS. STEWART: Earlier you mentioned that  
 13 you are a consultant teacher at Cooke Center, is  
 14 that correct?  
 15 MS. ORD: Yes.  
 16 MS. STEWART: What does that mean?  
 17 MS. ORD: A consulting teacher, I work  
 18 both with the CSE Region 9 as a liaison point  
 19 person, and I also work with the educational team  
 20 here at Cooke Center working with the team. I  
 21 will provide instructional support to related  
 22 service providers or teaching members of staff.  
 23 So my role is at least two-fold.  
 24 MS. STEWART: Ms. Ord during the  
 25 2011/2012 school year were you one of J [REDACTED]'s

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1 teachers?

2 MS. ORD: I'm sorry. I lost you. Can  
3 you say that again, please?

4 MS. STEWART: During the 2011/2012  
5 school year were you one of J [REDACTED]'s teachers?

6 MS. ORD: No.

7 MS. STEWART: Were you one of his  
8 related service providers?

9 MS. ORD: No.

10 MS. STEWART: Do you have any state  
11 certifications related to education?

12 MS. ORD: No, my certification is from  
13 the U.K., and it's a national certification from  
14 the U.K.

15 MS. STEWART: And it's a certification  
16 in what?

17 MS. ORD: It's in secondary education,  
18 and I also have a specialist diploma in speech  
19 and language difficulties in the classroom.

20 MS. STEWART: Ms. Ord at the time of the  
21 IEP meeting were you a full or part-time employee  
22 at Cooke?

23 MS. ORD: I'm sorry. I can hear someone  
24 in the background. I'm sorry.

25 MS. STEWART: We have an interpreter

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1 here.

2 MS. ORD: I'm sorry. I was part-time.

3 MS. STEWART: Did you work at the Cooke  
4 Center Academy or the Cooke Skills Program?

5 MS. ORD: I work at the--I'm based in  
6 the academy, but I also work with the educational  
7 team at Skills.

8 MS. STEWART: Prior to the IEP meeting  
9 did Ms. S [REDACTED] request that anyone aside from  
10 you and Ms. Sullivan attend the meeting?

11 MS. ORD: I'm sorry, did who request?

12 MS. STEWART: Ms. M [REDACTED], the student's  
13 mother.

14 MS. ORD: No.

15 MS. STEWART: Prior to the IEP meeting  
16 did you provide Ms. M [REDACTED] with any documents to  
17 use at the meeting?

18 MS. ORD: We have the progress report,  
19 which is issued to all parents, and we provide  
20 that to the CSE Region 9 team.

21 MS. STEWART: Did you observe J [REDACTED] in  
22 the classroom during the 2011/2012 school year?

23 MS. ORD: Yes.

24 MS. STEWART: How often did you observe  
25 him in the classroom?

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1 MS. ORD: We are a small setting so I  
2 tend to informally observe so do not record the  
3 number of times that I will observe students. I  
4 see students within the classroom setting and in  
5 the community setting and in less-structured  
6 times such as the recess and lunch time. So I  
7 could not speak to an exact figure with regard to  
8 my observations.

9 MS. STEWART: And as far as Exhibit 8 or  
10 9 I had her testify about it, but I don't  
11 believe--

12 (Crosstalk)

13 MS. STEWART: I didn't ask that to be  
14 put into evidence.

15 HEARING OFFICER NOE: Any objection?

16 MS. SEN: No.

17 HEARING OFFICER NOE: Okay, 9 and 10 in  
18 evidence.

19 (Whereupon DOE Exhibits 9 and 10 were  
20 admitted into evidence)

21 MS. STEWART: Ms. Ord, we also have an  
22 IEP annual review report document, and it says  
23 prepared by Sally Ord. Do you have that  
24 document?

25 MS. ORD: Yes, it's handwritten, is that

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1 correct?

2 MS. STEWART: It is.

3 MS. ORD: Yes.

4 MS. STEWART: Can you explain what this  
5 is?

6 MS. ORD: It's my notes. As you can  
7 tell, it's my handwriting. It's my notes from  
8 the IEP meeting that I attended. It's for my own  
9 use. I just like to take notes of all the  
10 meetings I attend.

11 MS. STEWART: Okay. Did you take these  
12 notes during the course of the review?

13 MS. ORD: Yes, I did.

14 HEARING OFFICER NOE: What number is  
15 that?

16 MS. STEWART: That was number 12, and I  
17 was also going to ask if it could be put into  
18 evidence.

19 HEARING OFFICER NOE: Any objection?

20 MS. SEN: No.

21 HEARING OFFICER NOE: 12 in evidence.

22 (Whereupon DOE Exhibit 12 was admitted  
23 into evidence)

24 MS. STEWART: Do you think your notes  
25 provide an accurate description of what was

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1 discussed at the meeting?

2 MS. ORD: As I said, they're really for  
3 my usage. So for me they are useful and I  
4 believe fairly accurate. As I said, it is for my  
5 own usage so I can't speak to whether other  
6 people would find them accurate.

7 MS. STEWART: What do you use these  
8 notes for?

9 MS. ORD: It's just for, as I said, my  
10 professional use. I tend to use these notes when  
11 attending the next year's annual review just so I  
12 can look back at any historical issues that may  
13 be of relevance to the next IEP meeting.

14 MS. STEWART: Did you have any  
15 discussions with Ms. M [REDACTED] prior to the May 22nd  
16 IEP meeting?

17 MS. ORD: I don't recall.

18 MS. STEWART: Do you recall if you had  
19 any discussions with her immediately after the  
20 IEP meeting? Just for today I'm just referring  
21 to the May 22nd, 2012 IEP meeting and not any  
22 subsequent meetings, just so you know. Do you  
23 recall if you had any discussions with her  
24 immediately after the meeting?

25 MS. ORD: When you say immediately after

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1 you mean exactly after the meeting.

2 MS. STEWART: Did you have any  
3 discussions with her at all about the IEP after  
4 the meeting?

5 MS. ORD: I had a brief discussion. I  
6 do not speak Spanish, so it was a brief  
7 discussion.

8 MS. STEWART: And what did you discuss?

9 MS. ORD: As I said, I don't speak  
10 Spanish so it was really just a conversation, a  
11 brief discussion regarding the meeting itself. I  
12 can't specifically recall what was stated, but it  
13 was just a very brief meeting, brief discussion.

14 MS. STEWART: Did you receive a copy of  
15 the IEP after the meeting?

16 MS. ORD: The IEP is provided by the  
17 parent to Cooke. It's uploaded onto our  
18 electronic system, yes.

19 MS. STEWART: So when did you receive  
20 the copy?

21 MS. ORD: As I said it's uploaded to our  
22 electronic system so I can't speak to when it was  
23 received. It wasn't addressed specifically to  
24 me.

25 MS. STEWART: Did you have any

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1 discussions with anyone at the Cooke Center about  
2 that IEP after the meeting?

3 MS. ORD: Not specifically, no.

4 MS. STEWART: Is one of your duties and  
5 responsibilities at Cooke to sit on IEP reviews?

6 MS. ORD: An IEP review, you mean the  
7 annual and triennial reviews.

8 MS. STEWART: I didn't hear what you  
9 said.

10 MS. ORD: Sorry, when you say sit in on  
11 reviews you mean the CSE Region 9 IEP annual  
12 reviews, is that correct?

13 MS. STEWART: Well, I'm just saying IEP  
14 meetings. They don't necessarily have to take  
15 place at CSE 9. Is that one of your duties and  
16 responsibilities, to participate in IEP meetings?

17 MS. ORD: Yes, all our meetings are at  
18 Region 9.

19 MS. STEWART: Okay. Do you know  
20 approximately how many meetings you participated  
21 in last year?

22 MS. ORD: It would be an approximation.  
23 I would say approximately 90, but that is an  
24 approximation.

25 MS. STEWART: How many students attended

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1 Cooke Center Academy last year?

2 MS. ORD: The academy or including  
3 Skills?

4 MS. STEWART: The academy.

5 MS. ORD: We are a program grades nine  
6 through twelve. Again, I'm sorry, I have to give  
7 you an estimate. I think last year it was about  
8 125.

9 MS. STEWART: Ms. Ord, approximately how  
10 many hearings did you testify at last year?

11 MS. ORD: I have no idea. I don't  
12 record the number of hearings that I'm asked to  
13 testify.

14 MS. STEWART: Now earlier we discussed  
15 the discussion documents. The various discussion  
16 documents from the teachers and related service  
17 providers, did you discuss those with those  
18 teachers and providers before the meeting?

19 MS. ORD: Yes, if there was anything  
20 that needed to be clarified. I do liaise with our  
21 team on an ongoing basis. So if there is  
22 anything that needs further clarification, yes, I  
23 will speak to them about the specific discussion  
24 documents. However, as I said, I do liaise with  
25 them on an ongoing basis.

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1 MS. STEWART: Okay. Do you know when it  
2 was determined that J [REDACTED] would be moving from  
3 Cooke Center Academy to Cooke Skills?

4 MS. ORD: No, I'm not involved at all in  
5 the enrollment process or the re-enrollment  
6 process.

7 MS. STEWART: Now, Ms. Ord, in your  
8 affidavit you state, and I'm looking at paragraph  
9 18, it says in the meeting I said that J [REDACTED]  
10 needs a small to teacher ratio, smaller than  
11 12:1:1. Last year J [REDACTED] was in classes with ten  
12 to twelve students and two teachers. How do you  
13 know you told the IEP team that he was in a class  
14 with twelve students and two teachers?

15 MS. ORD: Because I used the internal  
16 discussion documents in order to speak to ratios.

17 MS. STEWART: But all of the internal  
18 discussion documents say 12:1:1, correct?

19 MS. ORD: The internal discussion  
20 documents, within the ratio--when speaking to the  
21 ratios the understanding is that it is a Cooke  
22 provision, which is a teacher and an assistant  
23 teacher.

24 MS. STEWART: So it's not twelve  
25 students and two teachers, correct?

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1 MS. ORD: Well, it's a teacher and an  
2 assistant teacher who work together constantly in  
3 collaboration, and they also do co-teach and plan  
4 and review teaching materials.

5 MS. STEWART: But in your affidavit you  
6 said that you told the team that J [REDACTED] required  
7 something smaller than a 12:1:1. How is that  
8 classroom that you're describing with twelve  
9 students, a teacher, and an assistant teacher  
10 different from what you believe a 12:1:1 is?

11 MS. ORD: If I can just clarify, in my  
12 affidavit it actually states 12:1 plus one, which  
13 is how the program is captured on the IEP. So  
14 it's actually described on the IEP as a 12:1 plus  
15 one. The plus one within the D-75 12:1 plus one  
16 program is a paraprofessional. So in drawing a  
17 distinction between a 12:1 plus one and a class  
18 of 12 students, one head teacher, and one  
19 assistant teacher in a setting where there are 12  
20 students, one head teacher and one assistant  
21 teacher you are receiving the support of two  
22 teachers. Two teachers are providing the  
23 instructional support.

24 MS. STEWART: But you knew that both of  
25 the teachers in the classroom were not certified

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1 teachers, correct?

2 MS. ORD: I do not have any involvement  
3 within the hiring process of the teachers here at  
4 Cooke.

5 MS. STEWART: So you don't know whether  
6 those teachers in his class are certified or not?

7 MS. ORD: I understand they're very  
8 experienced teachers having worked closely--

9 MS. STEWART: (Interposing) But you're  
10 not answering the question that I asked. I'm just  
11 asking you whether you knew whether they were  
12 certified or not, and that's a yes or no  
13 question.

14 MS. ORD: No.

15 MS. STEWART: Do you have the March 2012  
16 Cooke Center progress report there with you?

17 MS. ORD: March 2012, no. Do I need to  
18 refer to it?

19 MS. STEWART: I can ask you questions  
20 without. Maybe you can answer questions without  
21 it. Do you know who his teachers were for ELA,  
22 who the teacher and assistant teacher was in that  
23 class?

24 MS. ORD: It was Ms. Chakin (phonetic),  
25 I believe.

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1 MS. STEWART: And was Ms. Chakin the  
2 teacher or the assistant teacher?

3 MS. ORD: Sorry, Ms. Sullivan. Ms.  
4 Sullivan is the head teacher.

5 MS. STEWART: Do you know who the  
6 assistant teacher was in that class?

7 MS. ORD: She worked with--no, I'm  
8 sorry. I'm thinking of this current year. No.

9 MS. STEWART: Earlier we went through  
10 the discussion documents, which are now in  
11 evidence as Exhibit 7, 8, 9, and 10, the  
12 different discussion documents prepared by the  
13 teachers and the related service providers. Do  
14 you believe the information within those  
15 discussion documents is accurate as it applies to  
16 J [REDACTED]?

17 MS. ORD: In terms of my usage of them  
18 within the limited usage of me presenting the  
19 information at the IEP and based on my  
20 understanding of G [REDACTED], yes.

21 MS. STEWART: Ms. Ord at the time of the  
22 IEP meeting did you believe that a 12:1:1 was  
23 inappropriate?

24 MS. ORD: Yes.

25 MS. STEWART: Did you believe a class of

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1 12 students was inappropriate?

2 MS. ORD: It depends on--I didn't state  
3 that at the IEP. It depends on the level of  
4 support within the classroom.

5 MS. STEWART: Is a classroom with two  
6 adults inappropriate for [REDACTED]?

7 MS. ORD: It depends on how many  
8 students are in the classroom and the nature of  
9 the support that is provided. If the two members  
10 of the staff in the class were two paras, no. It  
11 really depends on the nature of the staff and the  
12 number of students within the class.

13 MS. STEWART: Now when you talk about  
14 assistant teachers, is there a specific assistant  
15 teacher certification?

16 MS. ORD: Not that I'm aware of, no.

17 MS. STEWART: What do you believe the  
18 difference between an assistant teacher and a  
19 paraprofessional is?

20 MS. ORD: You're speaking about a  
21 paraprofessional in a 12:1 plus one, is that  
22 correct?

23 MS. STEWART: Well, you just said two  
24 paraprofessionals would be inappropriate. So what  
25 do you understand a paraprofessional to be?

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1 MS. ORD: So there are different types  
2 of paraprofessionals that support students with  
3 special education needs. There are  
4 paraprofessionals that are mandated on an IEP to  
5 be one-to-one paraprofessionals because of  
6 specific needs such as health needs, mobility  
7 needs, crisis needs, for example.

8 MS. STEWART: So what do you believe the  
9 difference between an assistant teacher and a  
10 classroom paraprofessional is?

11 MS. ORD: So a classroom  
12 paraprofessional in a 12:1 plus one setting in a  
13 D-75 school travels with the class. This is  
14 based on my observations of many 12:1 plus one  
15 programs. So the paraprofessional will travel  
16 with the class and does now work specifically  
17 within a given specialism or with a given  
18 teacher. So they do not have input into the  
19 curriculum, planning, or delivery or the  
20 modification of materials. So that is my  
21 understanding of what a class para does in a D-75  
22 setting. My understanding of an assistant teacher  
23 is that the assistant teacher works as part of a  
24 collaborative team with a specific teacher  
25 working on the planning, delivery, and

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1 modification of curriculum and instructional  
2 materials.

3 MS. STEWART: When you talk about  
4 delivery, what do you mean by that?

5 MS. ORD: So in terms of delivery that  
6 may be, for example, working on a specific skill  
7 with a specific group of students within a class.  
8 It could be that an assistant teacher will work  
9 very particularly on a skill set. So that would  
10 be an example of delivery. That's a very  
11 specific example of delivery. A broader sense of  
12 delivery would be in the delivery of educational  
13 materials and instructional materials.

14 MS. STEWART: You didn't disagree with  
15 the 12-month program recommendation, Ms. Ord, is  
16 that correct?

17 MS. ORD: No. Sorry, that is correct.

18 MS. STEWART: In your affidavit you  
19 state that at times it wasn't clear what was  
20 being typed into the IEP. What do you mean by  
21 that?

22 MS. ORD: Could you just direct me to  
23 where you're specifically referring?

24 MS. STEWART: I'll have to look through  
25 it because I took notes prior to--. It's

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1 paragraph 20.

2 MS. ORD: Paragraph 20.

3 MS. STEWART: Yes.

4 MS. ORD: So the top of the paragraph  
5 speaks to transition information. With regard to  
6 transition at the time it was, as I said,  
7 difficult to understand what was being captured  
8 and included in the IEP. There was no IEP  
9 produced at the meeting either in draft full or  
10 obviously in full form. So we were reliant on  
11 either the members of the team telling us what  
12 they had included or just really kind of hoping I  
13 guess that the information that we had included  
14 was being represented and captured in the IEP.

15 MS. STEWART: Did you speak to his  
16 transition? You just talked about transition at  
17 the meeting. Did you speak to that at the  
18 meeting?

19 MS. ORD: What are you specifically  
20 referring to?

21 MS. STEWART: I'm referring to your  
22 affidavit, paragraph 20, and then the testimony  
23 you just gave right now. You said it's talking  
24 about the discussion concerning transition.

25 MS. ORD: So transition in the sense of

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1 transitioning, the information regarding  
2 transitioning to a post-secondary setting if  
3 that's what you're talking to, yes.

4 MS. STEWART: No, I wasn't talking to  
5 anything. I was asking what are you referring to  
6 in paragraph 20 as far as transition?

7 MS. ORD: So transition, this is a  
8 transition IEP. A transition IEP looks forward  
9 to the ongoing transition from an educational  
10 setting to real-life setting. So in terms of  
11 discussing transition or speaking to transition  
12 that's what I'm referring to. The information  
13 that is included in the IEP but also the broader  
14 program which actually provides instruction for  
15 independent living.

16 MS. STEWART: So who presented the  
17 transition information at the meeting?

18 MS. ORD: The different elements of  
19 transition that are spoken to at the meeting, I  
20 provided information regarding the types of  
21 transition activities that G [REDACTED] was involved in  
22 in his current program. I also spoke to goals  
23 that G [REDACTED] was working on again within the  
24 context of the program. I also spoke to the  
25 transition needs of G [REDACTED] with regard to his

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1 ongoing move towards independence.

2 MS. STEWART: Did you have a document  
3 that contained all that information?

4 MS. ORD: Yes, I had it as a soft copy  
5 because it's a discussion document. Because it  
6 covers many of the different curriculum areas I  
7 also then provide an electronic copy to the  
8 Region 9 team after the meeting.

9 MS. STEWART: Did you provide a copy to  
10 the parent?

11 MS. ORD: No, we discussed it at the  
12 meeting, and I believe Ms. Alvarez spoke to it in  
13 Spanish at the meeting.

14 MS. STEWART: Ms. Ord, we have marked as  
15 Exhibit 6 a document titled transition goals to  
16 be added to IEP, annual measurable goals, and it  
17 says S. Ord, CCA, 5/22/12 at the top. Do you  
18 have that document?

19 MS. ORD: Yes, I do.

20 MS. STEWART: Can you just explain what  
21 that is?

22 MS. ORD: This is the document to which  
23 I was referring. It's a document which captures  
24 what G [REDACTED] was working on in terms of his  
25 coordinated set of transition activities, which

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1 is in the final page of the document. It also  
 2 captures the transition needs that need to be in  
 3 place for G [REDACTED] in order to make progress in his  
 4 independence. Again, it's on the last page of  
 5 the document and comprises of six points. Then  
 6 the first two pages of the document are goals on  
 7 which G [REDACTED] was working and goals that - - at  
 8 the time of the IEP. They relate to, again, life  
 9 skills and working towards independence.

10 MS. STEWART: And now I just ask that we  
 11 move Exhibit 6. I think you said before it was  
 12 marked.

13 HEARING OFFICER NOE: 6 is in evidence.

14 MS. STEWART: It's in evidence? Okay.

15 HEARING OFFICER NOE: 13 and 14 are not  
 16 in.

17 MS. STEWART: Ms. Ord, did you present  
 18 at the IEP meeting GRADE and GMADE scores?

19 MS. ORD: If I can refer back to the  
 20 discussion documents that you have already spoken  
 21 to.

22 MS. STEWART: Okay.

23 MS. ORD: On the math and ELA you'll see  
 24 the assessment pieces that we spoke to. So  
 25 that's the GRADE, the QRI, both for reading, and

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1 the GMADE for math. I presented those verbally  
 2 to the team.

3 MS. STEWART: Do you know how often the  
 4 GRADE is administered?

5 MS. ORD: The GRADE is administered  
 6 twice a year, and at one point we were  
 7 administering it three times a year.

8 MS. STEWART: Is the GRADE--what sort of  
 9 subject area is the GRADE assessing?

10 MS. ORD: The GRADE assessment is a  
 11 reading assessment. It's a paper and pencil  
 12 assessment which covers comprehension,  
 13 vocabulary, it gives listening comprehension. It  
 14 breaks down comprehension into different  
 15 categories such as sentence comprehension,  
 16 passage comprehension. So it's used  
 17 diagnostically to determine some of the  
 18 programmatic elements of our reading program.

19 MS. STEWART: And then the GMADE, what  
 20 is that assessing?

21 MS. ORD: The GMADE is a math  
 22 assessment. It is broken down into three  
 23 components. Again, it's a paper and pencil test.  
 24 Each component is designed to assess a different  
 25 key area. So you have, for example, the problem

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1 solving and the computation as two examples.

2 MS. STEWART: How often is the GMADE  
3 given at Cooke?

4 MS. ORD: Again, I believe we do it now  
5 twice a year, at the beginning and end of the  
6 academic year.

7 MS. STEWART: During the 2011/2012  
8 school year did you do it twice a year?

9 MS. ORD: I believe it was for some  
10 groups three times a year, but we also have other  
11 forms of assessment.

12 MS. STEWART: Ms. Ord, in your affidavit  
13 you say that during the IEP meeting you  
14 emphasized the importance of integrating related  
15 services with each other, is that correct?

16 MS. ORD: Could you just refer to the  
17 paragraph at which you're looking?

18 MS. STEWART: I am looking for that now.  
19 It's paragraph 15.

20 MS. ORD: Yes, I have that.

21 MS. STEWART: Now how do you know you  
22 emphasized that at the meeting?

23 MS. ORD: I spoke to the need for a  
24 multi-disciplinary approach. How do I know? I  
25 note it in my minutes, but I know that with

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1 G■■■■'s needs he needs an integrated approach.

2 MS. STEWART: I'm specifically asking  
3 you about the discussions at the meeting, not  
4 just generally about the student. Where does it  
5 say that in your minutes? We have that in  
6 evidence as Exhibit 12.

7 MS. ORD: We spoke to it throughout in  
8 terms of the management needs, and we spoke to  
9 those management needs needing to be reinforced  
10 throughout the curriculum and then--

11 MS. STEWART: (Interposing) But it's not  
12 reflected in your minutes, correct?

13 MS. ORD: - - .

14 MS. STEWART: I didn't hear what you  
15 said.

16 MS. ORD: In terms of the way that we  
17 talked about the balance of the meeting and the  
18 access and the management needs--the balance of  
19 the meeting and placement recommendations and  
20 also in terms of management needs, just making a  
21 quick note of the access to the counselor. We  
22 spoke to his ongoing need for the services to be  
23 integrated and to have full access to a counselor  
24 whenever he required it.

25 MS. STEWART: My prior question was how

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1 did you know that you mentioned that at the IEP  
2 meeting, and you said it was in your minutes. So  
3 my follow up question was where was it in your  
4 minutes. It's not in your minutes, correct?

5 MS. ORD: In terms of--

6 MS. STEWART: (Interposing) It's a yes  
7 or no question, Ms. Ord.

8 MS. ORD: Sorry, could you repeat the  
9 question?

10 MS. STEWART: Is it reflected in your  
11 minutes anywhere?

12 MS. ORD: Yes, I believe so.

13 MS. STEWART: And where is it reflected  
14 in your minutes?

15 MS. ORD: In the management needs in  
16 terms of access to a counselor.

17 HEARING OFFICER NOE: Access to a what?

18 MS. ORD: Counselor.

19 HEARING OFFICER NOE: Counselor?

20 MS. ORD: Should I continue?

21 MS. STEWART: If you're not done you  
22 can.

23 MS. ORD: Just in terms of the placement  
24 recommendation I spoke to the balanced program--

25 MS. STEWART: (Interposing) That was

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1 going to be my next question because I believe  
2 that's in your affidavit under paragraph 16 about  
3 the fact that [REDACTED] needs a balanced program.  
4 Did you explain at the meeting what a balanced  
5 program was?

6 MS. ORD: Yes.

7 MS. STEWART: What did you say?

8 MS. ORD: So I spoke to a balanced  
9 program as one which provides academic  
10 instruction but also instruction in transition,  
11 which we have just spoken to, and also  
12 instruction in vocational skills. So the  
13 balanced program that I was referring to and that  
14 I articulated at the meeting is one which  
15 includes those three curriculum areas, the  
16 academic, the transition, which is working  
17 towards independence, and also vocational,  
18 increasing vocational skills.

19 MS. STEWART: Ms. Ord, in your affidavit  
20 you state that the Department of Education  
21 members did not mention parent training in  
22 paragraph 24. Aside from the Department of  
23 Education members did anyone else mention parent  
24 training?

25 MS. ORD: No.

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1 MS. STEWART: So why did you include a  
2 statement about parent training in your affidavit  
3 if it was not discussed at the meeting?

4 MS. ORD: At the time of the meeting the  
5 District representative, Aminah Lucio, changed  
6 G■■■■'s classification to autism. Ms. M■■■■  
7 expressed concerns with regard to that  
8 classification and accepting that classification.  
9 So in terms of the working on parent training I  
10 mentioned it because of those issues.

11 MS. STEWART: Did you believe that  
12 parent training should have been discussed?

13 MS. ORD: I think that was a  
14 determination that would have been made by the  
15 District representative when she changed the  
16 classification.

17 MS. STEWART: So it's not something that  
18 you brought up at the meeting, is that correct?

19 MS. ORD: No. As I said, I believe that  
20 would have been something that the District  
21 representative would have spoken to.

22 MS. STEWART: Does the Cooke Center  
23 provide Ms. M■■■■ with parent training?

24 MS. ORD: We have a transition team  
25 headed by a transition coordinator who provides

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1 training with regard to needs and how to advocate  
2 for needs and how to transition through the  
3 services that are provided in adult services. So  
4 we do provide training.

5 MS. STEWART: Ms. Ord, I want to refer  
6 you to your minutes. I'm looking at the last  
7 page, page five, which says other at the top.

8 MS. ORD: Yes.

9 MS. STEWART: Now on that page it says  
10 A. Lucio suggested change in classification to  
11 autism as more services available to J■■■■ with  
12 this classification. Can you explain what the  
13 discussion was as far as that topic, what sort of  
14 services would be available to J■■■■?

15 MS. ORD: Ms. Lucio was not speaking to  
16 the educational services provided in the next  
17 year's IEP. She was referring to adult services  
18 post-21.

19 MS. STEWART: When it says referring to  
20 2009 ed-psych, what does that mean?

21 MS. ORD: Ms. Lucio at the time that she  
22 looked at the classification, which was about 15  
23 minutes towards the end of the meeting, referred  
24 to an evaluation which I believe had a diagnosis  
25 of autism.

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1 MS. STEWART: Let me just look at my  
2 notes because I may not have any other questions.

3 MS. STEWART: I don't have anything  
4 else, Ms. Ord.

5 HEARING OFFICER NOE: Do you have any  
6 questions? Hold on. Go ahead.

7 MS. SEN: Hi, Ms. Ord. It's Amanda  
8 Sensory again. You mentioned that G [REDACTED]'s  
9 classification was changed in the 2012 meeting.  
10 Do you know what his prior classification was?

11 MS. ORD: Speech and language.

12 MS. SEN: And then I actually have some  
13 questions about a document that was introduced  
14 last time, Exhibit 15. Do you have a document  
15 titled Stanford-Binet Intelligence Scales with  
16 Edition Narrative Report for G [REDACTED] S [REDACTED]?

17 MS. ORD: Yes.

18 MS. SEN: Can you tell me when you first  
19 learned that that document existed?

20 MS. ORD: Very recently. I can't give  
21 an actual date, but within the last calendar  
22 month.

23 HEARING OFFICER NOE: Within the last  
24 what?

25 MS. ORD: Calendar month of May.

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1 HEARING OFFICER NOE: Okay.

2 MS. SEN: So you didn't know that that  
3 document existed at the 2012 meeting.

4 MS. ORD: No.

5 MS. SEN: And if you had known of the  
6 document is there any reason you wouldn't have  
7 given it to the IEP team?

8 MS. ORD: No.

9 MS. SEN: Since the time you learning of  
10 the document did you communicate with anyone else  
11 about it?

12 MS. ORD: I spoke briefly with Ms.  
13 Clancy, the assistant principal, and also briefly  
14 with Ms. Bracken, who is the counselor.

15 MS. SEN: And did Ms. Bracken know of  
16 that document?

17 MS. ORD: Yes.

18 MS. SEN: And what did she tell you  
19 about it?

20 MS. STEWART: I'm going to the relevance  
21 of having her testify what Ms. Bracken told her  
22 about the document in the last month. It  
23 wouldn't be relevant to anything in the due  
24 process complaint.

25 MS. SEN: That's fine.

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1 HEARING OFFICER NOE: Anything else?  
 2 MS. SEN: No.  
 3 MS. STEWART: I do have one follow-up  
 4 question.  
 5 HEARING OFFICER NOE: Go ahead.  
 6 MS. STEWART: Ms. Ord, do you know if a  
 7 copy of this Exhibit 15 was provided to the  
 8 parent?  
 9 MS. ORD: I believe so, but I think,  
 10 again, possibly recently, but I'm speculating.  
 11 MS. STEWART: At the time of the meeting  
 12 did you know, aside from not having seen this  
 13 actual report, did you know that this full-scale  
 14 battery test had been given to the student?  
 15 MS. ORD: No. These tests are sometimes  
 16 given for the purpose of SSI so it's actually  
 17 something which is not educational in nature but  
 18 for a very specific purpose.  
 19 MS. STEWART: You said what?  
 20 HEARING OFFICER NOE: Social security  
 21 insurance.  
 22 MS. ORD: SSI.  
 23 MS. STEWART: SSI, okay.  
 24 MS. ORD: I believe it's part of the  
 25 application process.

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1 MS. STEWART: Okay, I don't have  
 2 anything else.  
 3 HEARING OFFICER NOE: I have a few  
 4 questions for you.  
 5 MS. ORD: Yes.  
 6 HEARING OFFICER NOE: Before you went to  
 7 this IEP meeting how did you prepare for it?  
 8 MS. ORD: I refer back to the previous  
 9 IEP. I will also review the discussion documents  
 10 that are provided to me by the educational team.  
 11 I will look over previous minutes or as I said  
 12 the IEP document itself.  
 13 HEARING OFFICER NOE: Did you discuss  
 14 what your position would be with the parent  
 15 before you went in there to the meeting, or did  
 16 you just go into the meeting and tell them your  
 17 report without the parent's knowledge of what you  
 18 were going to say?  
 19 MS. ORD: Most of what is captured in  
 20 the discussion documents is really a reflection  
 21 of what's in the progress report. So I don't  
 22 talk specifically to the discussion document  
 23 because it is an internal document, but it  
 24 reflects what's already mostly in the progress  
 25 report that's provided to parents.

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1 HEARING OFFICER NOE: So you never said  
2 anything to the parent as to what you would say  
3 at the meeting. This all came out upon your own  
4 review and the parent then was unaware of  
5 anything that you were saying at the time?

6 MS. ORD: In respect to being a  
7 reflection of those discussion documents, being a  
8 reflection of what's in the progress report--

9 HEARING OFFICER NOE: (Interposing)  
10 Anything at all. Was the parent kind of like  
11 taken by surprise at anything you had to say  
12 because she didn't know that you were going to be  
13 even so verbal at the meeting?

14 MS. ORD: I don't think she would have  
15 been taken by surprise because I'm really talking  
16 at the meeting on behalf of the members of the  
17 educational team who she is familiar with, and  
18 also it reflects what is also being provided in  
19 the program. So she was familiar with the  
20 program.

21 HEARING OFFICER NOE: So you didn't know  
22 whether or not the parent was in agreement or in  
23 disagreement with you participating at the level  
24 you did?

25 MS. ORD: I guess not, no.

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1 HEARING OFFICER NOE: And so you didn't  
2 have a discussion with the parent to let her know  
3 what you were going to say at the meeting or the  
4 documents that you were going to discuss?

5 MS. ORD: As I said, I'm not a Spanish-  
6 speaker. What I do is we'll also speak with a  
7 Spanish-speaker that we have on our staff that  
8 will then talk to Ms. M [REDACTED] about the upcoming  
9 IEP and that we're using the progress report.  
10 The person on staff will communicate some of the  
11 ideas that are captured and that is mostly  
12 captured in the progress report.

13 HEARING OFFICER NOE: But you didn't  
14 have any input from the parent as to what you  
15 were presenting to the IEP, is that correct? You  
16 were just presenting the documentation from the  
17 school without having any input from the parent  
18 as to what her opinion was, is that correct?

19 MS. ORD: As I said, they are discussion  
20 documents, yes.

21 HEARING OFFICER NOE: Yes, you didn't  
22 have a discussion with the parent as to what you  
23 would discuss.

24 MS. ORD: The documents that I was using  
25 as I've spoken to just now, the discussion

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1 documents were documents that were prepared for  
2 discussion at the meeting. So I didn't review  
3 them specifically with the parent.

4 HEARING OFFICER NOE: And the parent  
5 didn't know what you were going to present at the  
6 meeting.

7 MS. ORD: Not with regard to those  
8 specific documents.

9 HEARING OFFICER NOE: And you didn't  
10 have the parent's input when you were presenting  
11 at the meeting.

12 MS. ORD: No.

13 HEARING OFFICER NOE: Okay. I don't  
14 have any other questions. Anybody else?

15 MS. STEWART: I do have follow up.

16 HEARING OFFICER NOE: Go ahead.

17 MS. STEWART: Ms. Ord, first of all, I'm  
18 looking at your minutes, which we have as Exhibit  
19 12. There are several times in here where you  
20 use the word "mum". Are you referring to Ms.  
21 M [REDACTED] when you use that phrase?

22 MS. ORD: Yes, I'm sorry. That's my  
23 English. As I said, these notes are really for  
24 my own usage. So I have English spelling in  
25 there as well.

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1 MS. STEWART: So when you put mum were  
2 those things that Ms. M [REDACTED] was saying at the  
3 meeting?

4 MS. ORD: Yes.

5 HEARING OFFICER NOE: Anything else?

6 MS. STEWART: That's it?

7 HEARING OFFICER NOE: Anything else?

8 Okay, thank you.

9 MS. ORD: Thank you very much. Good  
10 afternoon.

11 HEARING OFFICER NOE: Next witness?

12 MS. SEN: I'm going to have to call  
13 Katherine Hibbard. She testified last time, but  
14 to clarify something about this schedule.

15 HEARING OFFICER NOE: Okay

16 MS. SEN: I think she's only available  
17 until 3:00.

18 HEARING OFFICER NOE: You can go off the  
19 record.

20 (OFF THE RECORD)

21 (ON THE RECORD)

22 HEARING OFFICER NOE: Ms. Hibbard, are  
23 you there?

24 MS. KATHERINE HIBBARD: Yes, hi.

25 HEARING OFFICER NOE: Hi, this is

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1           Hearing Officer Mary Noe. We're here on the  
 2           impartial hearing for G [REDACTED] S [REDACTED], and you're  
 3           still under oath because you had previously  
 4           testified.  
 5           MS. HIBBARD: I understand.  
 6           HEARING OFFICER NOE: We have some  
 7           questions for you. Go ahead.  
 8           MS. SEN: Do you have the Skills  
 9           schedule for 2012/2013 for G [REDACTED]'s group?  
 10          MS. HIBBARD: Yes, I do.  
 11          MS. SEN: Do you have it in front of  
 12          you?  
 13          MS. HIBBARD: Yes, I do.  
 14          MS. SEN: Could you tell me is that  
 15          schedule entirely accurate as to your ELA and  
 16          math periods or has anything changed?  
 17          MS. HIBBARD: No, it's not entirely  
 18          accurate. Because of G [REDACTED]'s internship  
 19          schedule he would have missed two math periods.  
 20          So for that reason, because I'm both literacy and  
 21          math teacher, with the permission of my program  
 22          coordinator I flipped the schedule on Thursday so  
 23          that math and ELA are flipped so that the last  
 24          period of the day on Thursday, period eight, is a  
 25          math class.

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1           MS. SEN: Okay. That's all the  
 2           questions I have.  
 3           MS. HIBBARD: Okay.  
 4           HEARING OFFICER NOE: Anything else?  
 5           MS. STEWART: No  
 6           MS. SEN: Okay, thank you. That was  
 7           very quick.  
 8           MS. HIBBARD: Thank you, bye.  
 9           HEARING OFFICER NOE: Bye. Okay, who is  
 10          next?  
 11          MS. SEN: Francis Tabone.  
 12          (OFF THE RECORD)  
 13          (ON THE RECORD)  
 14          HEARING OFFICER NOE: Hello?  
 15          DR. FRANCIS TABONE: Hello.  
 16          HEARING OFFICER NOE: My name is Mary  
 17          Noe. I'm the Hearing Officer. We're here at an  
 18          impartial hearing for G [REDACTED] S [REDACTED]. Do you  
 19          swear or affirm to tell the truth?  
 20          DR. TABONE: I do.  
 21          HEARING OFFICER NOE: You signed this  
 22          affidavit on May 10th?  
 23          DR. TABONE: Yes, I did.  
 24          HEARING OFFICER NOE: And you swore to  
 25          the accuracy of it?

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1 DR. TABONE: Yes, I did.  
 2 HEARING OFFICER NOE: And it's accurate  
 3 today as well?  
 4 DR. TABONE: It is.  
 5 HEARING OFFICER NOE: I don't know if it  
 6 was admitted into evidence, but do you have any  
 7 objection?  
 8 MS. STEWART: No.  
 9 HEARING OFFICER NOE: Okay. We have  
 10 some questions for you.  
 11 DR. TABONE: Thank you.  
 12 HEARING OFFICER NOE: Okay, go ahead.  
 13 MS. STEWART: Is it Mr. Tabone or Dr.  
 14 Tabone?  
 15 DR. TABONE: Mister/doctor.  
 16 MS. STEWART: Dr. Tabone, you visited  
 17 the proposed public school placement with Ms.  
 18 M [REDACTED], that's correct?  
 19 DR. TABONE: That is correct.  
 20 MS. STEWART: And that was the McSweeney  
 21 School, correct?  
 22 DR. TABONE: Correct.  
 23 MS. STEWART: Aside from your visit with  
 24 Ms. M [REDACTED] did you visit the school any other  
 25 times during the 2011/2012 school year?

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1 DR. TABONE: I visited the school twice.  
 2 Once was in the 2011/2012 school year, and I'm  
 3 not sure if the other one was in the 2011/2012 or  
 4 the 2010/2011. One was in the summer and one was  
 5 during the school year. I'm not sure when the  
 6 other one occurred.  
 7 MS. STEWART: When you visited with Ms.  
 8 M [REDACTED] did you take notes of your visit?  
 9 DR. TABONE: I don't recall if I wrote  
 10 anything down there.  
 11 MS. STEWART: Now who invited you, who  
 12 asked you to go to the public school placement  
 13 with Ms. M [REDACTED]?  
 14 DR. TABONE: The parent.  
 15 MS. STEWART: And when did she ask you  
 16 that?  
 17 DR. TABONE: I don't remember when she  
 18 asked.  
 19 MS. STEWART: Do you speak Spanish, Dr.  
 20 Tabone?  
 21 DR. TABONE: Not fluently.  
 22 MS. STEWART: So when you met with the  
 23 parent coordinator, did the parent coordinator  
 24 speak Spanish?  
 25 DR. TABONE: She spoke English and

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1 Spanish. There were other people on the visit.

2 She spoke to us in English and Spanish.

3 MS. STEWART: How many people were on  
4 the visit with you aside from Ms. M [REDACTED]?

5 DR. TABONE: I don't remember. That  
6 wasn't a big--only a few.

7 HEARING OFFICER NOE: I'm confused. You  
8 mean from outside coming into the school or at  
9 the school itself?

10 DR. TABONE: I don't think I understand  
11 the question.

12 HEARING OFFICER NOE: You went with the  
13 parent to the school, right?

14 DR. TABONE: Correct.

15 HEARING OFFICER NOE: Did anyone else go  
16 with you besides you and the parent into the  
17 school?

18 DR. TABONE: No.

19 HEARING OFFICER NOE: That's what I  
20 meant.

21 MS. STEWART: So the other people on the  
22 tour, were those McSweeney employees?

23 DR. TABONE: No, there was another  
24 parent or another family. Again, I didn't know  
25 them, but they were on the tour.

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1 MS. STEWART: And now how long did the  
2 tour last?

3 DR. TABONE: I would say it was  
4 approximately one hour to an hour and a half for  
5 the total time we were there.

6 MS. STEWART: Did Ms. M [REDACTED] ask any  
7 questions during the tour?

8 DR. TABONE: She did speak with the  
9 person who was on the tour with us, yes.

10 MS. STEWART: Did she communicate with  
11 the parent coordinator in Spanish?

12 DR. TABONE: She spoke both.

13 MS. STEWART: When you visited the  
14 school with Ms. M [REDACTED] did you have any documents  
15 with you about this student, J [REDACTED] S [REDACTED]?

16 DR. TABONE: I did not have any  
17 documents with me.

18 MS. STEWART: Did the parent have any  
19 documents with her?

20 DR. TABONE: I believe she had the IEP  
21 with her, yes.

22 MS. STEWART: Did she give a copy of the  
23 IEP to the parent coordinator, to your  
24 recollection?

25 DR. TABONE: My recollection is that she

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1 gave her paperwork, yes.

2 MS. STEWART: When did you first review  
3 [REDACTED]'s May 22nd, 2012 IEP?

4 DR. TABONE: When did I first review it?  
5 I don't remember definitively when I first  
6 reviewed it.

7 MS. STEWART: Now, in your affidavit you  
8 mentioned in one of the earlier paragraphs that  
9 you have reviewed his IEP. Did you review his  
10 IEP prior to your preparation for this  
11 litigation?

12 DR. TABONE: Briefly. Typically I would  
13 review all IEPs when they are first presented  
14 after a CSE meeting.

15 MS. STEWART: And why do you review the  
16 IEPs?

17 DR. TABONE: Just because I have to know  
18 about the services that need to be provided, the  
19 goals, the basic information that's contained  
20 goes through me in terms of program design and  
21 putting things together.

22 MS. STEWART: Why do you need to know  
23 the recommendation and the goals that are within  
24 the IEP?

25 DR. TABONE: Because I'm in charge of

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1 the school that provides those services and  
2 recommendations. It's very important for me to  
3 know the background and the items discussed at  
4 all students' CSE meetings that we serve from  
5 their classification to the mandates to the goals  
6 that are written there to any kind of testing  
7 that's been done. I review that for all  
8 students.

9 MS. STEWART: Do you follow the mandate  
10 in the IEP at the Cooke Center?

11 DR. TABONE: Sometimes. I'll just  
12 sometimes. It depends on the student and the  
13 student's needs. In many cases we will provide  
14 additional services. If we do reduce any  
15 services we do go through the CSE to make that  
16 change.

17 MS. STEWART: And you also mentioned  
18 that it's very important for you to know the  
19 goals in the IEP. Do you use those goals for  
20 anything at the Cooke Center?

21 DR. TABONE: Do we use them? Goals are  
22 constantly being worked on and reviewed to assess  
23 a student's level of functioning. So I would say  
24 they can provide information for us. Typically  
25 we know the student better than the CSE does so

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1           therefore I know what the student is capable of  
2           and I know the goals they're working on, and I'm  
3           looking at the accuracy of the report compared to  
4           what they're working on within the school.

5           MS. STEWART: You didn't attend this IEP  
6           meeting, correct?

7           DR. TABONE: To my recollection, no, I  
8           didn't.

9           MS. STEWART: We have in evidence  
10          several annual review discussion documents. Did  
11          you review those at any point?

12          DR. TABONE: I did not.

13          MS. SEN: This is outside the scope of  
14          the direct-examination. I'm going to object.

15          MS. STEWART: Actually, he offered some  
16          opinions about what J [REDACTED] required for the  
17          2012/2013 school year. So I believe the  
18          questions about how he gained that knowledge  
19          would be relevant, but he answered.

20          HEARING OFFICER NOE: He answered  
21          already. Let's move on.

22          MS. STEWART: In your affidavit you said  
23          in paragraph 16 that a class worksite would not  
24          be adequately individualized you said in your  
25          professional opinion. When did you develop that

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1           opinion? Do you need me to repeat that?

2           DR. TABONE: Can I answer the question?

3           HEARING OFFICER NOE: Yes.

4           DR. TABONE: Well, that opinion has been  
5           developed over time. I've visited several of  
6           those worksites on more than one occasion to  
7           understand what kinds of support and the way that  
8           they function.

9           MS. STEWART: So what do you mean by  
10          individualized?

11          DR. TABONE: Well, typically there is  
12          one person at the site, and there are 12 students  
13          who are engaged in some sort of communal job,  
14          depending on the worksite. So the students are  
15          for the most part just off on their own working.

16          MS. STEWART: Prior to the visit to the  
17          McSweeney School did you have any discussions  
18          with Ms. M [REDACTED]?

19          DR. TABONE: Well, she is a parent in  
20          the school. I'm sure I had discussions with her;  
21          about anything specific, that I don't know, but  
22          I'm sure I spoke to her. We have parent  
23          conferences, family conferences. Any time there  
24          was an event at school I would speak to her.

25          MS. STEWART: Did you have any specific

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1 discussions with her about the recommended  
2 placement prior to your visit with her?

3 DR. TABONE: No.

4 MS. STEWART: Did you have discussions  
5 with her about that recommended public school  
6 placement after your visit with her?

7 DR. TABONE: Directly after, probably.

8 MS. STEWART: Do you know what you  
9 discussed?

10 DR. TABONE: I honestly don't remember.  
11 It was some of the concerns with mom, she was  
12 very nervous about him not receiving academic  
13 support. Can I continue?

14 MS. STEWART: Yes, that's the  
15 interpreter that you hear.

16 DR. TABONE: So we spoke about the  
17 academic structure. The other thing that was of  
18 note was the students' level of functioning in  
19 the classes. There were students who were  
20 moderate to severe intellectual deficits that  
21 would not be appropriate cohorts for G [REDACTED].

22 MS. STEWART: In your affidavit you  
23 state that the parent coordinator said that  
24 academics occur at the work placement, is that  
25 correct?

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1 DR. TABONE: Yes, that is correct.

2 MS. STEWART: Did Ms. M [REDACTED] ask the  
3 parent coordinator how that was provided at the  
4 work placement?

5 DR. TABONE: We did have a conversation  
6 about that. I don't know who asked the question,  
7 but it was given to us that the person--there was  
8 one person who would do one or two periods of  
9 academics in the morning before the work began.

10 MS. STEWART: During your visit with Ms.  
11 M [REDACTED] you didn't view any classrooms did you?

12 DR. TABONE: We did not go into the  
13 rooms. We were not allowed to go into any of the  
14 rooms.

15 MS. STEWART: I don't have anything  
16 else.

17 HEARING OFFICER NOE: Hold on a minute.

18 DR. TABONE: Yes.

19 MS. SEN: I don't have any questions.

20 HEARING OFFICER NOE: Thank you.

21 DR. TABONE: Thank you very much.

22 HEARING OFFICER NOE: Bye now. Are you  
23 ready to call the parent?

24 MS. SEN: If you're ready.

25 HEARING OFFICER NOE: Raise your right

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1 hand, please. You're going to fix the mike.  
 2 (OFF THE RECORD)  
 3 (ON THE RECORD)  
 4 HEARING OFFICER NOE: Raise your right  
 5 hand, please. Do you swear or affirm to tell the  
 6 truth?  
 7 MS. M (THROUGH INTERPRETER): I  
 8 swear.  
 9 HEARING OFFICER NOE: And her name?  
 10 MS. M: My name is M M.  
 11 HEARING OFFICER NOE: You want to get  
 12 this affidavit into evidence?  
 13 MS. SEN: Yes. Ms. M, did you sign  
 14 - - .  
 15 HEARING OFFICER NOE: Too much noise?  
 16 MALE VOICE: I can't hear you. You're  
 17 being drowned out by the interpretation. So if  
 18 you speak closer to the microphone louder.  
 19 HEARING OFFICER NOE: When she is  
 20 speaking maybe you can back--when the parent has  
 21 to speak if you can then move forward. You  
 22 understand what the problem is?  
 23 FEMALE VOICE: Yes.  
 24 HEARING OFFICER NOE: So when you have  
 25 to speak you've got to move forward then because

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1 they have to get it on the transcript. When  
 2 she's speaking you move back and just talk into  
 3 her ear. We'll see if we can work it that way.  
 4 Go ahead.  
 5 MS. SEN: Ms. M, did you - - .  
 6 MS. M: Yes, I signed.  
 7 MS. SEN: And do you believe everything  
 8 in this affidavit was true and is true now?  
 9 MS. M: Yes, it's true.  
 10 HEARING OFFICER NOE: Okay, any  
 11 objection to L in evidence?  
 12 MS. STEWART: No, we're going to put it  
 13 in Spanish?  
 14 HEARING OFFICER NOE: Yes.  
 15 MS. STEWART: Are we going to have the  
 16 interpreter read it into evidence?  
 17 HEARING OFFICER NOE: No, leave it in  
 18 there.  
 19 MS. SEN: You want to have it  
 20 translated for yourself?  
 21 HEARING OFFICER NOE: No, if that's the  
 22 way you want to put it in that's fine with me.  
 23 MS. SEN: But I'm asking - -  
 24 interpreter.  
 25 HEARING OFFICER NOE: We don't provide

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1 official interpreters to provide services to your  
2 clients. So this is the way you want it to go  
3 in, this is the way it goes in. She's ready to  
4 cross-examine.

5 MS. SEN: - - is translated by the  
6 interpreter.

7 HEARING OFFICER NOE: And she's going to  
8 translate it now. She's going to cross-examine  
9 her. Go right ahead.

10 MS. SEN: I have to object.

11 HEARING OFFICER NOE: You want to object  
12 to your own document going into evidence.

13 (Crosstalk)

14 MS. SEN: --translated.

15 HEARING OFFICER NOE: It's your--you  
16 represent this client. I don't represent the  
17 client. I don't take her direct testimony. You  
18 take her direct testimony. You have decided to  
19 put in this affidavit, and I'm going to go  
20 through this at the end. I'm going to put in my  
21 orders as to the motion to, because I see you  
22 include in your paper, the motion to have  
23 testimony live rather than by affidavit. I'll  
24 include my order as a Hearing Officer's exhibit  
25 and also your motion to have the Department of

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1 Education interpret your client's affidavit.  
2 This is what you've decided to do. I don't  
3 represent your client. You've decided to put it  
4 in in Spanish. Then it goes in in Spanish unless  
5 you want to withdraw it. This is your document.

6 MS. SEN: I can ask that the unofficial  
7 translation be submitted into evidence. It's  
8 important for you to consider--

9 HEARING OFFICER NOE: (Interposing) If  
10 you want to offer another document into evidence.

11 MS. STEWART: First of all, I would also  
12 like the translator or the interpreter to read it  
13 into evidence. The reason why I don't want to  
14 use the English interpretation is because my co-  
15 worker who read it disagreed with some of the  
16 things that their interpreter believed that it  
17 said.

18 HEARING OFFICER NOE: How are you going  
19 to know whether or not your co-worker disagrees  
20 with this interpreter?

21 MS. STEWART: Well, I don't know because  
22 I don't speak Spanish either.

23 HEARING OFFICER NOE: I think it's  
24 somewhat inappropriate for the Hearing Officer's  
25 interpreter to interpret a written document.

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1 That's not what she's here to do. I wouldn't  
 2 want her to corrupt in any way this affidavit,  
 3 and this it's the Hearing Office's obligation.  
 4 This interpreter is here for the benefit of  
 5 people's testimony during the course of your  
 6 hearing. You can offer it into evidence. What  
 7 number do you want to identify it as?

8 MS. SEN: For the unofficial English  
 9 translation? S.

10 HEARING OFFICER NOE: Okay, S, parent's  
 11 unofficial English affidavit. How many pages is  
 12 it?

13 MS. SEN: Five.

14 HEARING OFFICER NOE: Any objection?

15 MS. STEWART: I do object because I  
 16 don't know that that's an accurate  
 17 interpretation. So that would be my objection to  
 18 it.

19 HEARING OFFICER NOE: Well, what's the  
 20 basis of your understanding that it's not  
 21 accurate?

22 MS. STEWART: I had one of my co-workers  
 23 who also speaks Spanish to go through it, and I  
 24 had him go through the Spanish affidavit with the  
 25 unofficial translation just to compare and there

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1 were places where he believed that the  
 2 translation was not correct.

3 MS. SEN: Do you speak Spanish?

4 HEARING OFFICER NOE: No, I don't, only  
 5 English. So you're objecting in that you feel  
 6 it's not accurate as to an exact translation? Is  
 7 that your opinion?

8 MS. STEWART: It may not be accurate  
 9 based on two different people that speak Spanish,  
 10 my co-worker that speaks Spanish, that certain  
 11 aspects were not accurate. I was going to cross  
 12 based on his interpretation of the Spanish.

13 HEARING OFFICER NOE: At this point I'm  
 14 going to leave it out. I'll leave it out for  
 15 identification purposes only, and let's go  
 16 forward with your cross-examination.

17 MS. STEWART: And just for the record,  
 18 so I make it clear, the DOE would also have liked  
 19 for the Spanish affidavit to be translated into  
 20 the English by the interpreter that's here.

21 HEARING OFFICER NOE: I cannot assure  
 22 that this translator who comes in here to  
 23 translate testimony can translate a document.  
 24 This isn't federal court. She's not necessarily  
 25 qualified. I don't know whether she is or she

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1 isn't, but I'm not going to rely on the Hearing  
2 Office's interpreter to interpret the accuracy of  
3 this document. This isn't my witness. I can't  
4 put that burden on a Hearing Officer. She's here  
5 to come in. Her responsibility is to interpret  
6 the verbal discussion that goes on.

7 MS. GUZMAN: I'm not supposed to do  
8 translation.

9 HEARING OFFICER NOE: So I don't know  
10 what agency the Department of Education employs,  
11 but at this point it's my understanding they  
12 employ interpreters to come in here and translate  
13 verbally. I'm not going to take it on--and then  
14 I've got to be responsible for the English  
15 translation.

16 MS. STEWART: So I was thinking that the  
17 interpreter would actually be reading this into  
18 evidence. I don't know if the Department would  
19 translate this.

20 HEARING OFFICER NOE: Why don't you ask  
21 her some questions?

22 MS. STEWART: I only have a handful of  
23 questions actually.

24 HEARING OFFICER NOE: Okay.

25 MS. STEWART: After the IEP meeting did

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1 you meet with your attorney?

2 MS. M [REDACTED]: Yes.

3 MS. STEWART: And how soon after the IEP  
4 meeting did you meet with your attorney?

5 MS. M [REDACTED]: I don't remember.

6 MS. STEWART: Did you meet with them  
7 prior to visiting the public school placement?

8 MS. M [REDACTED]: Who, the attorney?

9 MS. STEWART: Yes.

10 MS. M [REDACTED]: No.

11 MS. STEWART: Ms. M [REDACTED], we have in  
12 evidence as Exhibit E the Cooke Center enrollment  
13 contract. We have D and E enrollment contracts  
14 in evidence. Were you provided with copies of  
15 these contracts in Spanish?

16 MS. M [REDACTED]: No.

17 MS. STEWART: Did you have any  
18 discussions with anyone at Cooke Center about how  
19 you would pay the tuition at Cooke Center this  
20 school year?

21 MS. M [REDACTED]: Can you repeat the question  
22 again?

23 MS. STEWART: Did you have any  
24 discussions with anyone at the Cooke Center about  
25 how you would pay for the tuition this school

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1 year?

2 MS. M [REDACTED]: No, I didn't make any  
3 payment.

4 MS. STEWART: Did you have any  
5 discussions with anyone at Cooke Center about  
6 when payments would be made?

7 MS. M [REDACTED]: I can't pay that amount of  
8 money, but I had to do an agreement with them to  
9 see how I can make the payment.

10 MS. STEWART: What sort of agreement  
11 did you do with them to see how you would make  
12 the payment?

13 MS. M [REDACTED]: I don't know how I'm going  
14 to do it. The only thing that I got to pay is  
15 the house that I live. I had to stay in my  
16 house.

17 MS. STEWART: When you signed this  
18 contract on June 25th did anyone interpret the  
19 terms of this contract to you?

20 MS. M [REDACTED]: Yes, the person that was  
21 there, she speaks Spanish.

22 MS. STEWART: At the time you signed  
23 this contract did you tell the person you spoke  
24 with that you could not afford the tuition?

25 MS. GUZMAN: If you can repeat the

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1 question again. The interpreter thinks she is a  
2 little bit nervous.

3 MS. STEWART: She needs me to repeat it  
4 or for you to repeat it?

5 MS. GUZMAN: You because I only have to  
6 say what you say.

7 MS. STEWART: Okay.

8 MS. SEN: - - talking at once?

9 MS. GUZMAN: No, it's more easy for me  
10 because I don't forget anything.

11 HEARING OFFICER NOE: Otherwise she's  
12 editorializing it and skipping the words. So it  
13 probably is better for her as an interpreter.  
14 That's the way interpreters do it. Then they  
15 homogenize things, and it's not exactly the word  
16 for word. Go ahead. Just go slowly, and if you  
17 need it repeated we repeat it. That's all.

18 (Crosstalk)

19 MS. STEWART: Let me think of what I  
20 just asked you. You said that when you signed  
21 the contract there was a person there that  
22 interpreted it into Spanish to you, correct?

23 MS. M [REDACTED]: Yes, that is correct.

24 MS. STEWART: Did you have any  
25 discussions with that person about whether or not

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1 you could afford the tuition?

2 MS. M [REDACTED]: No, I didn't have any

3 discussion with her.

4 MS. STEWART: To this date have you paid

5 any portion of the tuition?

6 MS. M [REDACTED]: No, I haven't paid

7 anything.

8 MS. STEWART: Has anyone at Cooke Center

9 inquired about when the tuition would be paid?

10 MS. M [REDACTED]: We haven't talked about

11 that.

12 MS. STEWART: In your affidavit in

13 paragraph 12 you state that the school cannot

14 provide adequate training for J [REDACTED] to become

15 more independent in the community. Is that

16 correct? She might need to look at her

17 affidavit. It's paragraph 12. I'll ask the

18 question again. What I believe paragraph 12

19 states is that the school cannot provide adequate

20 training for J [REDACTED] to become more independent in

21 the community. Is that correct?

22 MS. M [REDACTED]: Yes, that is correct.

23 MS. STEWART: How do you know that the

24 school cannot provide that?

25 MS. M [REDACTED]: Because the students the

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1 age of J [REDACTED] they stay more time on the place

2 they work than the academic preparation.

3 MS. STEWART: I don't have any other

4 questions.

5 HEARING OFFICER NOE: Do you have some

6 questions?

7 MS. SEN: - - .

8 HEARING OFFICER NOE: Okay.

9 MS. SEN: So I'm going to refer to

10 document 15. Ms. M [REDACTED], have you ever seen this

11 document?

12 MS. M [REDACTED]: Yes.

13 MS. SEN: When did you first see this

14 document?

15 MS. M [REDACTED]: After the IEP meeting.

16 MS. SEN: Which IEP meeting? This year

17 or last year?

18 MS. M [REDACTED]: Last year.

19 MS. SEN: Do you remember when you

20 actually saw this--

21 (Crosstalk)

22 MS. M [REDACTED]: In March, February or March

23 for the application for the social security.

24 MS. SEN: February or March of what

25 year?

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1 MS. M [REDACTED]: This year.  
 2 MS. SEN: - - .  
 3 HEARING OFFICER NOE: I have some  
 4 questions. Ask her if she remembers the IEP  
 5 meeting of May 22nd, 2012. Does she remember?  
 6 MS. M [REDACTED]: The IEP?  
 7 HEARING OFFICER NOE: No, not the IEP,  
 8 the meeting.  
 9 MS. M [REDACTED]: Yes.  
 10 HEARING OFFICER NOE: Ask her if she  
 11 remembers saying anything during the meeting to  
 12 anyone.  
 13 MS. M [REDACTED]: The only thing that they  
 14 say that they going change was the  
 15 classification.  
 16 HEARING OFFICER NOE: I'm asking what  
 17 she said, anything that she may have said at the  
 18 meeting.  
 19 MS. M [REDACTED]: I say if they change the  
 20 classification it's for his good for his  
 21 preparation is the most important to me and for  
 22 him.  
 23 HEARING OFFICER NOE: So that's what she  
 24 told them?  
 25 MS. M [REDACTED]: I told Ms. Lucio--

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1 HEARING OFFICER NOE: (Interposing) What  
 2 did she tell Ms. Lucio?  
 3 MS. M [REDACTED]: On the IEP they changed  
 4 [REDACTED]'s classification.  
 5 HEARING OFFICER NOE: So she told them  
 6 to change the classification?  
 7 MS. M [REDACTED]: No, I didn't tell her.  
 8 They decide to change the classification.  
 9 HEARING OFFICER NOE: I'm just asking if  
 10 she ever said any words at the IEP meeting.  
 11 MS. M [REDACTED]: I don't remember what I  
 12 said.  
 13 HEARING OFFICER NOE: I don't have any  
 14 other questions. Anything else?  
 15 MS. STEWART: I do have a follow up  
 16 question.  
 17 HEARING OFFICER NOE: Go ahead.  
 18 MS. STEWART: Your attorney just showed  
 19 you Exhibit 15. Did you ask the Cooke Center to  
 20 conduct this evaluation?  
 21 HEARING OFFICER NOE: Show her Exhibit  
 22 15. She's going to show her.  
 23 MS. M [REDACTED]: I asked the Cooke Center.  
 24 HEARING OFFICER NOE: I asked what?  
 25 MS. M [REDACTED]: I asked them for that.

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1 HEARING OFFICER NOE: She asked them to  
2 conduct this evaluation?

3 MS. M [REDACTED]: Yes, because I need it  
4 because I need it for the application.

5 HEARING OFFICER NOE: When did she ask  
6 them to conduct this evaluation?

7 MS. M [REDACTED]: I did that in August.

8 HEARING OFFICER NOE: Of what year?

9 MS. M [REDACTED]: 2012.

10 HEARING OFFICER NOE: I'm sorry. Go  
11 ahead.

12 MS. STEWART: Now the date of this  
13 report is before August 2012. The report is  
14 dated January 5th, 2012. Do you know if you  
15 requested this before that date?

16 MS. M [REDACTED]: Maybe because I was doing  
17 the process of guardianship, and I need that for  
18 the person that was helping me for guardianship,  
19 and I needed the evaluation and also for the  
20 social security.

21 MS. STEWART: So at the time of this May  
22 2012 IEP meeting did you have this evaluation?

23 MS. M [REDACTED]: I didn't have it for the  
24 IEP.

25 MS. STEWART: I don't have anything

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1 else.

2 HEARING OFFICER NOE: Do you have any  
3 other questions?

4 MS. SEN: No.

5 HEARING OFFICER NOE: Okay, anything  
6 else? Let's just go through these exhibits and  
7 make sure you have everything that you want in  
8 evidence. If there are any objections you can  
9 object. So let's start with parent's exhibits.  
10 Please just follow along, and then if necessary  
11 you'll let me know. I have parent's A, B, C, D,  
12 E, F, G in evidence. Is that correct?

13 MS. STEWART: Yes.

14 MS. SEN: - - any of those into  
15 evidence. Are we doing it now?

16 HEARING OFFICER NOE: No, no, no, I  
17 thought it was previously.

18 MS. SEN: No, they're not in evidence  
19 yet.

20 HEARING OFFICER NOE: Okay, so let's go  
21 with A. A is the due process response, three  
22 pages, April 8th, 2013. Any objection?

23 MS. STEWART: No.

24 HEARING OFFICER NOE: B, a letter to  
25 Mark Jacobi from Charles Gosnell (phonetic), two

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1 pages. Any objection?

2 MS. STEWART: No.

3 HEARING OFFICER NOE: C, letter to Mark

4 Jacobi from Todd Silverblatt, three pages, any

5 objection?

6 MS. STEWART: No.

7 HEARING OFFICER NOE: D, enrollment

8 contract, Cooke Center, two pages. Any

9 objection?

10 MS. STEWART: No.

11 HEARING OFFICER NOE: E, Cooke Center

12 enrollment contract 2012/2013 academic year, two

13 pages, any objection?

14 MS. STEWART: No.

15 HEARING OFFICER NOE: F, 2012 federal

16 income tax return for G [REDACTED] S [REDACTED], two pages.

17 Any objection?

18 MS. STEWART: For the student?

19 HEARING OFFICER NOE: I think it's the

20 parent, the father.

21 MS. STEWART: Is that the father or the

22 son? I'm sorry. No, I don't have any objection.

23 HEARING OFFICER NOE: G, the mother and

24 father live at the same residence but don't file

25 a joint tax return. G, 2012 federal income tax

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1 return for M [REDACTED] M [REDACTED], two pages. Any

2 objection?

3 MS. STEWART: No.

4 HEARING OFFICER NOE: H, PSX721 Sweeney

5 School expenditures, 2010/2011, print date May

6 6th, 2013, one page. Any objection?

7 MS. STEWART: I did object to this one

8 as not being relevant to the 2012/2013 school

9 year. Also, there were no witnesses that were

10 even asked about this document, nor do any of the

11 affidavits refer to this document.

12 MS. SEN: So this is just introduced for

13 the reasonableness of the cost of tuition at

14 Cooke, and the 2010/2011 school year is the last

15 available public publication.

16 HEARING OFFICER NOE: I'm going to

17 sustain the objection and return it to you and

18 mark it for identification. I believe we have I

19 in evidence, affidavit of Hibbard, seven pages.

20 Yes?

21 MS. STEWART: Yes.

22 HEARING OFFICER NOE: J is affidavit of

23 Fowler, seven pages. Yes?

24 MS. STEWART: Yes.

25 HEARING OFFICER NOE: K, affidavit of

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1 Clancy, five pages?  
 2 MS. STEWART: Yes.  
 3 HEARING OFFICER NOE: L, affidavit of  
 4 M [REDACTED], five pages?  
 5 MS. STEWART: Yes, I believe we have  
 6 that in evidence.  
 7 HEARING OFFICER NOE: M, affidavit of  
 8 Ord, five pages?  
 9 MS. STEWART: Yes.  
 10 HEARING OFFICER NOE: N, affidavit of  
 11 Tabone, four pages.  
 12 MS. STEWART: Yes.  
 13 HEARING OFFICER NOE: And then we have a  
 14 letter from Amanda sent to the Hearing Officer  
 15 dated April 29th, 2013, five pages.  
 16 MS. STEWART: I don't have an objection  
 17 to O.  
 18 HEARING OFFICER NOE: P is the parent's  
 19 motion and opposition to the verbal order that  
 20 the District--not that the District not translate  
 21 it. I'm not going to direct that the District--  
 22 this was the Hearing Office. I thought you had  
 23 requested that the Hearing Office translate it.  
 24 You have in here P that the District--  
 25 MS. SEN: (Interposing) Right, the

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1 Hearing Office is part of the District.  
 2 HEARING OFFICER NOE: No, it's not part  
 3 of the District. We are a totally different--I  
 4 am not an employee of the Department of  
 5 Education. We are not part of the School  
 6 District, any school district. Any objection to  
 7 P?  
 8 MS. STEWART: No.  
 9 HEARING OFFICER NOE: Q is the  
 10 Department's response to the parent's motion,  
 11 five pages. Any objection?  
 12 MS. STEWART: No.  
 13 HEARING OFFICER NOE: R, the parent's  
 14 opening statement, five pages. Any objection?  
 15 MS. STEWART: No.  
 16 HEARING OFFICER NOE: We have S marked  
 17 for identification only, parent's unofficial  
 18 English affidavit, which is five pages.  
 19 (Whereupon parent's Exhibits A through H  
 20 and O through R were admitted into evidence)  
 21 HEARING OFFICER NOE: Now we have the  
 22 District's documents. Okay, one at a time we'll  
 23 go through them. You have your list? 1 is the  
 24 3/18/2013 due process complaint, five pages.  
 25 MS. SEN: No objection.

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1 HEARING OFFICER NOE: 2 is the 4/30/12  
 2 meeting invitation, four pages.  
 3 MS. SEN: No objection.  
 4 HEARING OFFICER NOE: 3 is the 5/22/12  
 5 IEP, 15 pages.  
 6 MS. SEN: I think 3 through 12 are  
 7 already in evidence.  
 8 HEARING OFFICER NOE: I don't know about  
 9 4.  
 10 MS. STEWART: I have 4 marked in  
 11 evidence from the first hearing date.  
 12 HEARING OFFICER NOE: Let's just go  
 13 through 4 anyway. So you don't have any  
 14 objection to 3, right?  
 15 MS. SEN: No.  
 16 HEARING OFFICER NOE: 4 is March 2012,  
 17 the Cooke Center Academy progress report,  
 18 S [REDACTED], 16 pages, correct?  
 19 MS. SEN: Yes, no objection.  
 20 HEARING OFFICER NOE: I think today we  
 21 put into evidence 5, 6, 7, 8, 9, 10, and you  
 22 don't have any objection to those, do you?  
 23 MS. SEN: No.  
 24 HEARING OFFICER NOE: 11 was Alvarez IEP  
 25 meeting minutes. I think it was put in the other

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1 day, four pages, any objection?  
 2 MS. SEN: No.  
 3 HEARING OFFICER NOE: 12 is Sally Ord's  
 4 IEP minutes, five pages. Any objection?  
 5 MS. SEN: No.  
 6 HEARING OFFICER NOE: 13 is June 2012  
 7 progress report, 14 pages, any objection?  
 8 MS. SEN: No.  
 9 HEARING OFFICER NOE: 14 is the Cooke  
 10 Center student assessment portfolio, seven pages,  
 11 any objection?  
 12 MS. SEN: No.  
 13 HEARING OFFICER NOE: I believe 15 is  
 14 already in evidence. There is no objection,  
 15 right?  
 16 MS. SEN: No.  
 17 HEARING OFFICER NOE: 16 is in evidence,  
 18 October 27th, 2010 classroom observation, one  
 19 page. No?  
 20 MS. SEN: No objection.  
 21 HEARING OFFICER NOE: Now, 17, Final  
 22 Notice of Recommendation, June 15th, 2012, one  
 23 page. Any objection?  
 24 MS. SEN: No.  
 25 HEARING OFFICER NOE: 18, November 2012

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1 Cooke Center Academy progress report, 16 pages,  
2 any objection?

3 MS. SEN: No.

4 HEARING OFFICER NOE: March 2013 Cooke  
5 Center Academy progress report, 16 pages, any  
6 objection?

7 MS. SEN: No.

8 HEARING OFFICER NOE: 20 is the Cooke  
9 Center Summer Academy goals, four pages. Any  
10 objection?

11 MS. SEN: No.

12 HEARING OFFICER NOE: 21, I think this  
13 already went in, May 9th, 2013 affidavit of Susan  
14 Naclerio, five pages.

15 MS. SEN: No objection.

16 HEARING OFFICER NOE: 22 is May 9th,  
17 2013 affidavit of Evelyn Alvarez, seven pages.

18 MS. SEN: No objection.

19 HEARING OFFICER NOE: 23 is the Cooke  
20 Center Summer Academy goals, two pages.

21 MS. SEN: I do object to that. I don't  
22 think it's relevant. It has nothing to do with  
23 this student, and there was no testimony  
24 regarding it.

25 MS. STEWART: Well, I put it in just to

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1 show the goals for another student because I  
2 believed it was relevant to prong two. That  
3 would be for 23 and 24.

4 HEARING OFFICER NOE: I'm going to mark  
5 it for identification and sustain the objection.  
6 So that's 23 for ID. 24 you have the same  
7 objection?

8 MS. SEN: Same objection.

9 HEARING OFFICER NOE: I'm going to mark  
10 that one for identification as well. 24 is 16  
11 pages. 25 is the Cooke Center Academy Skills  
12 Program description, five pages.

13 MS. SEN: No objection.

14 HEARING OFFICER NOE: 26 is the DOE  
15 opening statement, three pages.

16 MS. SEN: No objection.

17 HEARING OFFICER NOE: 27 is the summer  
18 2012 curriculum outline, one page.

19 MS. SEN: No objection.

20 HEARING OFFICER NOE: And 28, what's 28?  
21 It's marked for identification. Do you know?

22 MS. STEWART: I don't believe we have a  
23 28.

24 HEARING OFFICER NOE: I know what it  
25 was. It was--I have it in evidence as Hearing

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1 Officer's Exhibit 1, which is the Skills schedule  
2 for 2012/2013.

3 (Whereupon DOE Exhibits 1 through 4, 13,  
4 14, 17 through 20 and 26 were admitted into  
5 evidence)

6 HEARING OFFICER NOE: I am going to put  
7 in evidence as Hearing Officer's Exhibit 2 my  
8 order on the request to have testimony verbal  
9 rather than by affidavit.

10 (Whereupon IHO Exhibit 2 was admitted  
11 into evidence)

12 HEARING OFFICER NOE: As far as the  
13 translation is concerned I guess I didn't write  
14 an order on that, right? I just told you that we  
15 don't translate District's--

16 (Crosstalk)

17 HEARING OFFICER NOE: If you sent me a  
18 motion--

19 MS. SEN: (Interposing) I didn't get an  
20 order from you.

21 HEARING OFFICER NOE: Then I didn't get  
22 your motion. If you send me a motion a write an  
23 order.

24 MS. STEWART: An order on which one?

25 HEARING OFFICER NOE: In other words

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1 instead of having the direct testimony by  
2 affidavit to have it verbally. She's requesting  
3 the pre-hearing order that I sent out.

4 MS. SEN: I did get your pre-hearing  
5 order. Can we put that in?

6 HEARING OFFICER NOE: Sure, we can put  
7 that into evidence. We'll put that in as Hearing  
8 Officer's Exhibit 2, a pre-hearing order. I will  
9 check, but if I didn't get your motion then I  
10 don't write an order. If I get your motion, then  
11 I write an order. So I will check.

12 MS. SEN: I do also have e-mails, e-  
13 mailing my motion to you. So I'd like to put  
14 that in evidence, too.

15 HEARING OFFICER NOE: I believe you.  
16 I'm going to check with the case manager. I will  
17 submit my order that was sent to you and the case  
18 manager as well on testimony by affidavit.

19 MS. STEWART: What was Hearing Officer's  
20 Exhibit 2?

21 HEARING OFFICER NOE: The pre-hearing  
22 order.

23 MS. STEWART: Okay.

24 HEARING OFFICER NOE: But I don't know  
25 that I wrote an order on your request to have the

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1       Hearing Office translate or provide you with a  
2       translator to translate your affidavit. I don't  
3       know that I wrote an order. I don't know that  
4       you made a motion. I think you just made a  
5       request and I denied it.

6               MS. SEN: That motion is P. I did make  
7       a request and you denied it.

8               HEARING OFFICER NOE: Since I have that  
9       motion now I'll write an order now. My order  
10      will be similar that it is denied. So that will  
11      be Hearing Officer's Exhibit 4.

12              (Whereupon IHO Exhibit 4 was admitted  
13      into evidence)

14              HEARING OFFICER NOE: The Hearing Office  
15      does not provide translators for parties, neither  
16      the District nor the parent.

17              MS. STEWART: What was Hearing Officer's  
18      Exhibit 3? I must have missed that?

19              HEARING OFFICER NOE: Hearing Officer's  
20      Exhibit 3 is the order that I send when the  
21      motion is made that there not be testimony by  
22      affidavit but rather a verbal testimony, what  
23      they say live testimony. I think that's it.  
24      Anything else?

25              MS. STEWART: No. I guess the last

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1       thing is that we have three days to submit the  
2       closing, which I'm assuming will be Monday.

3               HEARING OFFICER NOE: That will be fine.  
4       Anything else?

5               MS. SEN: Three business days, I had it  
6       as Tuesday.

7               HEARING OFFICER NOE: It can be Tuesday.  
8       Tuesday is fine.

9               MS. STEWART: That's fine.

10              HEARING OFFICER NOE: Anything else?  
11      No? Okay, thank you.

12              (Whereupon at 3:52 p.m. the proceeding  
13      was adjourned.)

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## C E R T I F I C A T I O N

I, Trisha Ruckart, do hereby certify that I typed the transcript In the Matter of [REDACTED] S [REDACTED] taken on June 6, 2013, by Lucius Piernos at the offices of the Department of Education, 131 Livingston Street, Brooklyn, New York, and that to the best of my ability, this is an accurate transcription of what was recorded at that time and place.



TRISHA RUCKART, Transcriber

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DEPARTMENT OF EDUCATION  
Of the  
CITY OF NEW YORK

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In the Matter of:

J ■■■ S ■■■

Case No.: 143983

-----X

District #02  
131 Livingston Street  
Brooklyn, New York 11201

Wednesday,  
June 19th, 2013

The above-entitled matter came on for hearing  
at 1:30 p.m.

BEFORE: MARY NOE,  
Impartial Hearing Officer

A P P E A R A N C E S:

For the Student:

AMANDA SEN, Attorney  
M ■■■ M ■■■, Parent  
TODD SILVERBLATT, Attorney  
THOMAS GRAY, Attorney

For the Department of Education:

BRITTANIA STEWART, DOE Attorney

Ubiquis/Nation-Wide Reporting & Convention Coverage  
Twenty-Two Cortlandt Street – Suite 802, New York, NY 10007  
Phone 212-227-7440 \* 800-221-7242 \* Fax 212-227-7524

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>V. D.</u>	<u>J</u>
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E X H I B I T S

<u>PARENT</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
I	Affidavit for Katherine Hibbard, 7 pages	260	267
J	Affidavit for Victoria Fowler, 7 pages	262	267
N	Affidavit for Francis Tabone, 4 pages	262	267
K	Affidavit of Mary Clancy, 5 pages	265	267
M	Affidavit of Sally Ord, 5 pages	265	267
P	Motion in opposition, 4 pages	265	267
X	Parent's Affidavit, 4 pages	273	273

<u>DEPARTMENT OF EDUCATION</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>IN EV.</u>
5	Psychoeducational evaluation, dated 2009, 1 page	264	267
6	IEP transition goals from Sally Ord dated 6/12/12, 1 page	263	267

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7	Speech and language discussion document, 2 pages	265	267
8	Academic ELA discussion document, 3 pages	265	267
9	Academic Math discussion document, 2 pages	265	267
10	Counseling discussion document, 2 pages	265	267
12	Notes of Sally Ord, 5 pages	265	267

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P R O C E E D I N G S

HEARING OFFICER MARY NOE: Okay, good afternoon. My name is Mary Noe. I'm here on the continuing hearing of J [REDACTED] S [REDACTED], case number 143983. Before we get started, let's have everybody identify themselves, starting on my left.

MS. BRITTANIA STEWART: Brittania Stewart, attorney for the Department of Education.

MS. AMANDA SEN: Amanda Sen, attorney for the Parent, from Partnership for Children's Rights.

MS. M [REDACTED] M [REDACTED]: M [REDACTED] M [REDACTED], J [REDACTED] S [REDACTED]'s mother.

MR. THOMAS GRAY: Thomas Gray, G-R-A-Y, Attorney for the Parent, from Partnership for Children's Rights.

MR. TODD SILVERBLATT: Todd Silverblatt, Partnership for Children's Rights, attorney.

HEARING OFFICER NOE: Okay. So an interpreter was ordered. This case was scheduled for 1:30. I checked with the case manager before, and an interpreter was ordered. Unfortunately, it is now 2:10. They've called

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1 this interpreter service. There's no  
 2 interpreter. That's the bottom line here. We  
 3 have no further information.  
 4 Supposedly at 1:45, they were sending an  
 5 interpreter who was going to take 10 minutes to  
 6 get here, but it's now 2:10, and there's no  
 7 interpreter. So I--what is it that you want to  
 8 do? It's your case first.  
 9 MS. SEN: Well, I guess I--I have some  
 10 evidence stuff to deal with, because going  
 11 through the transcript, there were some things  
 12 that weren't admitted.  
 13 HEARING OFFICER NOE: I--okay. Oh, all  
 14 right. But I received notice of your  
 15 corrections. I have not--I didn't get a copy of  
 16 this transcript. I asked them for a copy of the  
 17 transcript. So I'll go through that. But if you  
 18 have documents that you want to put into  
 19 evidence. Did you--  
 20 MS. SEN: (Interposing) Yes, some of  
 21 them didn't--well, that too.  
 22 HEARING OFFICER NOE: And - - a copy of  
 23 the document?  
 24 MS. SEN: Yes. So should we do that  
 25 first, or then--because there were also things

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1 that we thought were admitted, and then they  
 2 didn't--  
 3 HEARING OFFICER NOE: (Interposing) Make  
 4 it to the admission?  
 5 MS. SEN: Yes. So I just wanted to go  
 6 through that.  
 7 HEARING OFFICER NOE: Whatever you--  
 8 whatever you--  
 9 MS. SEN: (Interposing) Let's do that.  
 10 So the--I have two Exhibit A's for the Parent,  
 11 and one is--what was marked as Exhibit A, which  
 12 is the Department of Education due process  
 13 response. And then my affidavit for Katherine  
 14 Hibbard (phonetic) was listed as Exhibit A on the  
 15 first hearing date. It's actually Exhibit I.  
 16 HEARING OFFICER NOE: Okay. So we have  
 17 a correction as to one of your Exhibits. And  
 18 it's Exhibit I, which is--  
 19 MS. SEN: (Interposing) Affidavit of  
 20 Katherine Hibbard.  
 21 HEARING OFFICER NOE: Affidavit of  
 22 Katherine Hibbard. And that was mistakenly--  
 23 MS. SEN: (Interposing) Marked as A.  
 24 HEARING OFFICER NOE: --identified as A.  
 25 But now it's corrected, and it's I. And how many

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1 pages is it?  
2 MS. SEN: That one--  
3 HEARING OFFICER NOE: And we'll find out  
4 if she's going to be--  
5 MS. SEN: (Interposing) It's seven  
6 pages.  
7 HEARING OFFICER NOE: Seven pages. Do  
8 you have any objection to that going in as  
9 Exhibit I?  
10 MS. STEWART: No, I believe we already  
11 had it in evidence too.  
12 HEARING OFFICER NOE: Okay, but it's not  
13 going to be A, it's going to be I.  
14 MS. STEWART: Okay.  
15 HEARING OFFICER NOE: Okay? All right.  
16 MS. STEWART: And that's Affidavit for  
17 Katherine Hibbard?  
18 HEARING OFFICER NOE: Right.  
19 MS. STEWART: Okay.  
20 MS. SEN: And then for Exhibits J and N,  
21 which are also Affidavits, we went through in the  
22 transcript of the objections, and there were no  
23 objections, but I guess it wasn't admitted.  
24 HEARING OFFICER NOE: Okay, tell me who  
25 J is?

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1 MS. SEN: J is Victoria Fowler.  
2 HEARING OFFICER NOE: Victoria Fowler.  
3 Do you have any objection?  
4 MS. STEWART: Victoria Fowler's  
5 Affidavit?  
6 HEARING OFFICER NOE: Affidavit.  
7 MS. STEWART: Yes. I believe that was  
8 already admitted, so, I don't know.  
9 HEARING OFFICER NOE: Okay, how many  
10 pages is it?  
11 MS. SEN: That is seven pages.  
12 HEARING OFFICER NOE: Okay, the next  
13 one? Affidavit of--  
14 MS. SEN: (Interposing) Is Francis  
15 Tabone.  
16 HEARING OFFICER NOE: Francis Tabone.  
17 MS. SEN: And that is four pages.  
18 HEARING OFFICER NOE: Four pages.  
19 Exhibit N. Do you have any objection?  
20 MS. STEWART: No, and I believe it was  
21 also already in evidence, so.  
22 HEARING OFFICER NOE: Okay. What else?  
23 MS. SEN: Yes, we went through the  
24 objections--  
25 HEARING OFFICER NOE: (Interposing)

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1 That's fine.

2 MS. SEN: Yes. So then, just that the  
3 Department of Education Exhibit Six was not  
4 identified. So that's the IEP transition goals  
5 from Sally Ord.

6 HEARING OFFICER NOE: It wasn't  
7 identified?

8 MS. SEN: It just says not identified.  
9 Oh, and it also says--doesn't say it's in  
10 evidence.

11 HEARING OFFICER NOE: I thought we did--

12 MS. SEN: (Interposing) I mean, we went  
13 through all of these--

14 HEARING OFFICER NOE: (Interposing)  
15 Okay.

16 MS. SEN: It's just that--I don't know.

17 HEARING OFFICER NOE: All right. Okay,  
18 so what Exhibit is that?

19 MS. SEN: That is the Affidavit of--I  
20 mean, the transition goals from Sally Ord.

21 HEARING OFFICER NOE: And what number is  
22 that?

23 MS. SEN: Six.

24 HEARING OFFICER NOE: Okay, transition  
25 goals.

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1 MS. SEN: And it's actually the same  
2 with Five. We talked about it, but it--

3 HEARING OFFICER NOE: (Interposing) Five  
4 is what?

5 MS. SEN: Five is the psychoeducational  
6 evaluation from 2009.

7 HEARING OFFICER NOE: Okay, and these  
8 are her Exhibits.

9 MS. SEN: Yes.

10 HEARING OFFICER NOE: So you don't have  
11 any objection to them going at all?

12 MS. SEN: No, I don't. Yes.

13 HEARING OFFICER NOE: Okay. All right.  
14 What else?

15 MS. SEN: And there's an Exhibit 28  
16 listed for the Department of Education, but we  
17 actually admitted that as IHO Exhibit One.

18 HEARING OFFICER NOE: Okay.

19 MS. SEN: So there's no 28.

20 HEARING OFFICER NOE: Okay.

21 MS. SEN: And then I have a whole bunch  
22 of page numbers to add.

23 HEARING OFFICER NOE: Page numbers to  
24 add to what?

25 MS. SEN: To the--so they're a bunch of

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1 Exhibits that didn't have page numbers listed.  
2 Like, Exhibit K was admitted, but there's no  
3 number of pages.

4 HEARING OFFICER NOE: Oh, the number of  
5 the pages on the Exhibit itself?

6 MS. SEN: Yes.

7 HEARING OFFICER NOE: Okay, you can just  
8 read that into the record.

9 MS. SEN: Okay. So Parent's Exhibit K,  
10 the Affidavit of Mary Clancy, is five pages. And  
11 Parent's Exhibit M, the Affidavit of Sally Ord is  
12 five pages, and Parent's Exhibit P, a motion in  
13 opposition, is four pages, and Department of  
14 Education Exhibit Seven, a speech and language  
15 discussion document, is two pages, and Department  
16 of Education Exhibit Eight, the academic ELA  
17 discussion document, is three pages, and  
18 Department of Education Exhibit Nine, the  
19 academic math discussion document, is two pages,  
20 and Department of Education Exhibit 10, the  
21 counseling discussion document, is two pages.  
22 And Department of Education Exhibit 12, the notes  
23 of Sally Ord, is five pages.

24 HEARING OFFICER NOE: Do you have any  
25 objection to any of those page numbers?

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1 MS. STEWART: You know, I didn't look at  
2 the page numbers, but I'm assuming they were  
3 already admitted into evidence.

4 HEARING OFFICER NOE: Do you want to  
5 give her a copy of that, and then do you want to  
6 make that conclusion when you come back, or do  
7 you want to just--

8 MS. STEWART: (Interposing) Sure.

9 HEARING OFFICER NOE: --go with this - -  
10 ? So that--what do you--it's up to you. What do  
11 you want to do?

12 MS. STEWART: Which ones? Could you  
13 just mention again?

14 MS. SEN: Seven, Eight, Nine, 10, and  
15 12. And I just took the page numbers from your  
16 page--

17 MS. STEWART: Oh, yes, I believe my  
18 cover sheet is correct. That's fine.

19 HEARING OFFICER NOE: Okay? All right.

20 MS. SEN: And then I have the IHO  
21 Exhibits--they didn't--also they didn't get  
22 correct. I have IHO Number Two as the order on  
23 request for verbal testimony. With that, we  
24 discussed as being IHO Exhibit Number Three, and  
25 Exhibit Two should be the pre-hearing order,

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1 which is--

2 HEARING OFFICER NOE: (Interposing)

3 Well, I will go through the transcript, and I  
4 will put those in.

5 MS. SEN: Okay.

6 HEARING OFFICER NOE: You can object to  
7 them, that's fine, but I'll be putting them in  
8 anyway.

9 MS. SEN: Okay.

10 HEARING OFFICER NOE: I'll be marking  
11 them. Make sure that I get it verified.

12 MS. SEN: I just want to make sure that  
13 I have the correct numbers.

14 HEARING OFFICER NOE: I'll make sure  
15 that you get the correct numbers.

16 MS. SEN: Okay. And can I get a copy of  
17 those? I don't have all the--

18 HEARING OFFICER NOE: (Interposing) I'll  
19 give you a copy, but not today.

20 MS. SEN: Okay.

21 (Whereupon Parents' Exhibits I, J, N, K,  
22 M, P, X, and Department of Education Exhibits 5,  
23 6, 7, 8, 9, 10, 12 were admitted into evidence.)

24 HEARING OFFICER NOE: So now, what are  
25 we doing today? I have to tell you I have to

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1 write a decision tonight on this case, because  
2 the compliance date is extended. But if you want  
3 to have another hearing date, you can have  
4 another hearing date.

5 MS. SEN: But I thought that--okay.

6 MS. STEWART: While we were going  
7 through the evidence, prior to the Parent's e-  
8 mail, there was a discussion that if the Hearing  
9 Office had the document translated, we could  
10 agree to that translation. And--

11 HEARING OFFICER NOE: (Interposing) That  
12 was between you and counsel, right?

13 MS. STEWART: Right. And so while we  
14 were waiting, they said they just got it,  
15 literally just now.

16 MS. SEN: Okay.

17 MS. STEWART: So I don't know if that  
18 would eliminate the need for having a interpreter  
19 and--

20 HEARING OFFICER NOE: (Interposing) This  
21 is up to you. This is up to you. I have no  
22 idea. I don't know what you want to do, but I'll  
23 be writing this decision tonight, so. But you  
24 know what, why don't you discuss this translation  
25 thing?

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1 MS. STEWART: Okay.

2 HEARING OFFICER NOE: I'll just leave,

3 because it's easier for me to leave.

4 MS. STEWART: Okay.

5 HEARING OFFICER NOE: We'll go off the

6 record. You could discuss it. I'll give you a

7 few minutes, and then I'll come back and you can

8 let me know what you want to do.

9 MS. STEWART: Well, I don't need to

10 discuss it. I don't have an issue with the

11 affidavit coming in. If they want to discuss it

12 amongst each other, then can discuss it.

13 MS. SEN: I'm also fine with the

14 affidavit coming in. I just--we have to--

15 HEARING OFFICER NOE: (Interposing) So

16 then we don't need any--

17 MS. SEN: (Interposing) We were also

18 going to do the cross, because of the translation

19 last time.

20 MS. STEWART: Well, with that, I was

21 going to--

22 HEARING OFFICER NOE: (Interposing)

23 Well, she does the cross.

24 MS. STEWART: --object to that anyway.

25 Right, because I already did the cross.

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1 HEARING OFFICER NOE: Right. She does

2 cross.

3 MS. SEN: Right. I thought because of

4 the--

5 HEARING OFFICER NOE: (Interposing) So

6 yes, unless she wants additional cross now that

7 she has a translated copy.

8 MS. SEN: No, but I mean, because the

9 translation--the quality of the translation was

10 so poor last time. I didn't think--and the

11 Parent didn't feel like she was getting all the--

12 HEARING OFFICER NOE: (Interposing) The

13 quality of the translation on cross-examination

14 was poor?

15 MS. SEN: Yes.

16 HEARING OFFICER NOE: Who made that

17 determination?

18 MS. SEN: The Parent.

19 HEARING OFFICER NOE: Well, how would

20 the Parent make a determination as to the

21 quality, if she doesn't speak English?

22 MS. SEN: Because of very--the little

23 English she speaks, she said that it didn't seem

24 like the translator was getting everything--was

25 telling her everything. And the she also thought

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1 it was very confusing.

2 HEARING OFFICER NOE: (Interposing) Why  
3 didn't she say something at the time of the  
4 hearing? Who did she communicate this to, and  
5 when?

6 MS. SEN: To me the next day, which is  
7 when I e-mailed you.

8 HEARING OFFICER NOE: Do you speak  
9 Spanish?

10 MS. SEN: I don't.

11 HEARING OFFICER NOE: So then how did  
12 she communicate that to you?

13 MS. SEN: Through someone in my office.  
14 We spoke through a translator.

15 HEARING OFFICER NOE: I don't know.  
16 What do you have to say?

17 MS. STEWART: Well, I mean my position  
18 is, is that if the Parent was here, I did my  
19 cross. We had several witnesses during the last  
20 hearing date. There was no objection presented  
21 by counsel or Parent to the interpreter's ability  
22 to interpret.

23 I don't agree with redoing the cross-  
24 examination, considering that I did it. I asked  
25 her all my questions. She must understand--the

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1 Parent basically indicates that she understands  
2 some English, and then there was also an  
3 interpreter here interpreting, so I believe that  
4 my cross should stand.

5 HEARING OFFICER NOE: First, let's get  
6 to the affidavit. Do you have this document?

7 MS. STEWART: No, they have it. They  
8 said they can upload it to the system, and then  
9 bring us a copy.

10 HEARING OFFICER NOE: Do you--have you  
11 seen this document?

12 MS. SEN: I have not.

13 MS. STEWART: I haven't seen it. They  
14 just--she said it just came just now.

15 HEARING OFFICER NOE: But you're in  
16 agreement with this?

17 MS. SEN: I mean, I would want a chance  
18 to review it, but I likely would agree. I  
19 stipulate to the - - .

20 HEARING OFFICER NOE: Okay, could you--

21 MS. STEWART: (Interposing) Yes, I'm  
22 going to see if they're done with that now.

23 HEARING OFFICER NOE: --see if you get  
24 it, and then we'll deal with the next issue?

25 Okay, so it seems that transcription has been

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1 provided to both parties. And the Parent's  
2 affidavit.

3 MS. SEN: Yes.

4 HEARING OFFICER NOE: So, Ms. Sen?

5 MS. SEN: Yes, there are a couple of  
6 very minor mistakes, but I would like to  
7 stipulate to it.

8 HEARING OFFICER NOE: Okay. are you  
9 willing to stipulate to them?

10 MS. STEWART: Yes.

11 HEARING OFFICER NOE: Okay, so let's  
12 enter it into evidence as Parent's Exhibit--what?

13 MS. SEN: This would be--because I'm  
14 applying a couple of other pieces of evidence.  
15 It would be X.

16 HEARING OFFICER NOE: X.

17 MS. SEN: I need a copy of the it. I  
18 don't have one.

19 HEARING OFFICER NOE: Okay, now what's  
20 next? And that's one, two, three, four pages.

21 (Whereupon Parents' Exhibit X was  
22 admitted into evidence.)

23 HEARING OFFICER NOE: Okay, what's next?  
24 Anything else?

25 MS. SEN: Yes. I mean, I did make the

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1 application to redo the cross-examination,  
2 because of the translation.

3 HEARING OFFICER NOE: Well, I don't know  
4 that you make that application to redo cross-  
5 examination. I would imagine that's district's  
6 application, if she wants to redo the cross-  
7 examination. You want to redo the answers? Is  
8 that what you want to redo?

9 MS. SEN: No, the whole cross-  
10 examination. And regarding your question, I  
11 think it's the--

12 HEARING OFFICER NOE: (Interposing)  
13 Well, do you want to redo your cross-examination?

14 MS. STEWART: No.

15 MS. SEN: It's obviously your decision,  
16 but--

17 HEARING OFFICER NOE: No, no, but what--  
18 I'm not sure what you're asking me for, because  
19 she makes an application to redo a cross-  
20 examination. I don't know that I would allow her  
21 to redo the cross-examination, but she's not  
22 making that application to redo the cross-  
23 examination. So you're asking to redo the  
24 answers to the cross-examination.

25 MS. SEN: There's some questions as

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1 well, because the Parent wasn't able to fully  
 2 understand the question.  
 3 HEARING OFFICER NOE: Okay, how many  
 4 people had testified on that day? I wasn't--I  
 5 don't have the transcript in front of me. This -  
 6 - your transcript, I believe.  
 7 MS. SEN: Five, I believe.  
 8 HEARING OFFICER NOE: Five people.  
 9 MS. SEN: Yes.  
 10 HEARING OFFICER NOE: And she was the  
 11 last person to testify?  
 12 MS. SEN: Yes.  
 13 HEARING OFFICER NOE: And--  
 14 MS. SEN: (Interposing) I also asked  
 15 that the transcript be translated for her.  
 16 HEARING OFFICER NOE: The transcript of  
 17 this hearing?  
 18 MS. SEN: Well, for that day. Not for  
 19 the first day, because the translation was fine  
 20 on the first day.  
 21 MS. STEWART: There was six witnesses,  
 22 including the Parent.  
 23 HEARING OFFICER NOE: There was six  
 24 witnesses, including the Parent.  
 25 MS. SEN: On the first day--I mean, on

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1 the second day?  
 2 MS. STEWART: On the second day, yes.  
 3 Mary Clancy, Sally Ord, Victoria Fowler, Francis  
 4 Tabone, Katherine Hibberd--  
 5 HEARING OFFICER NOE: Wait, she can't  
 6 hear--  
 7 MS. SEN: (Interposing) Katherine  
 8 Hibberd did testify.  
 9 HEARING OFFICER NOE: Okay, so there  
 10 were six witnesses that testified on that day?  
 11 MS. STEWART: Including the Parent.  
 12 HEARING OFFICER NOE: What time did we  
 13 start? I don't have the transcript in front of  
 14 me--on that day?  
 15 MS. SEN: I believe we started at noon.  
 16 HEARING OFFICER NOE: We started at  
 17 noon, and what time did we end?  
 18 MS. STEWART: I know we went past 3:00,  
 19 because--  
 20 HEARING OFFICER NOE: (Interposing) You  
 21 could go--at the end of the transcript, it  
 22 usually has the time.  
 23 MS. SEN: I was so eager to leave, yes.  
 24 HEARING OFFICER NOE: It usually has the  
 25 time.

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1 MS. STEWART: 3:52.

2 HEARING OFFICER NOE: Okay, so we went  
3 from noon until 3:52, and the Parent only had  
4 then contacted you after that day and said that  
5 her own testimony was a problem?

6 MS. SEN: Well, she said the full  
7 hearing was a problem.

8 HEARING OFFICER NOE: And why wouldn't  
9 she let you know during a break, or during that  
10 time? Did she indicate why?

11 MS. SEN: Well, we can't speak very well  
12 together, because she doesn't speak very much  
13 English, and I speak very little Spanish.

14 HEARING OFFICER NOE: But there was an  
15 interpreter here.

16 MS. SEN: Right, but it would have to be  
17 through the interpreter that she said that the  
18 interpreter was doing badly. Which as you can  
19 imagine, I'm sure it's awkward.

20 HEARING OFFICER NOE: Well, do you want  
21 to be heard on this?

22 MS. STEWART: No, I mean, I think I gave  
23 my position. I reviewed the Parent's testimony.  
24 It seemed like her answers--she was answering  
25 questions that I was asking, and when the Hearing

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1 Officer asked her questions, it looks like she  
2 was answering the questions that the Hearing  
3 Officer was asking.

4 I am not clear on, you know, if there's  
5 a particular topic that, you know, she feels like  
6 she wasn't answering the question that I was  
7 asking. Maybe she can advise about that, but I  
8 don't see where the answers don't match the  
9 question that I was asking.

10 HEARING OFFICER NOE: Did she give you  
11 any more specific information as to the problem  
12 with the interpreter?

13 MS. SEN: Well, it was both that she  
14 felt that the interpreter was not interpreting  
15 everything that she said, and that when she was  
16 testifying in particular, the simultaneous nature  
17 of the translation was very confusing, because  
18 she was trying to listen to two people at once.  
19 She was trying to understand the English that she  
20 could at the same time that she was listening to  
21 the interpreter. So it was very confusing.

22 HEARING OFFICER NOE: So she was unable  
23 to answer the questions, then? Is that what  
24 she's saying?

25 MS. SEN: She felt that the  
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1 interpretation was--made it very difficult for  
 2 her.  
 3 HEARING OFFICER NOE: No, that's not the  
 4 question I asked. She was unable to answer the  
 5 questions because of this? So the testimony that  
 6 is in this record is inaccurate? Is that what  
 7 you're trying to tell us?  
 8 MS. SEN: You will have to ask her.  
 9 HEARING OFFICER NOE: I'm not her  
 10 attorney. I'm not going to ask her these  
 11 questions. You're making the application to have  
 12 her redo her--basically to have her redo her  
 13 answers now, after I don't know how many days  
 14 later. I didn't know this. I thought we were  
 15 coming in for her direct examination. I didn't  
 16 realize--  
 17 MS. SEN: (Interposing) I had e-mailed  
 18 you on the 7th. And then you had said we would  
 19 do the direct and the cross. And so it was my  
 20 understanding that that--  
 21 HEARING OFFICER NOE: (Interposing) Not  
 22 cross. I didn't think we were going on cross. I  
 23 thought we would just do a direct. Because it  
 24 was my understanding that you did not agree on  
 25 the translation. So that's why we were coming

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1 in, is to do the direct testimony then.  
 2 MS. SEN: Okay, this is where the--  
 3 HEARING OFFICER NOE: (Interposing) So  
 4 having a person now come forward after all these  
 5 days, after a transcript has been made to now  
 6 answer questions from cross-examination, to me  
 7 seems like it would be prejudicial to the school  
 8 district. If in fact--and I don't have the  
 9 transcript, nor have I read the transcript.  
 10 If she was non-responsive to these  
 11 questions, or her answers did not seem to answer  
 12 the question, perhaps I could understand it.  
 13 But--and I haven't read this transcript, so I  
 14 don't know. District's counsel, have you read  
 15 the transcript?  
 16 MS. SEN: I have read the transcript.  
 17 HEARING OFFICER NOE: And do you find  
 18 that her answers are responsive to the questions  
 19 that were asked? So in other words, if I asked  
 20 you, you know, how many days are you working this  
 21 week and you tell me, you know, I'm leaving at  
 22 5:00 today, that's not responsive, right?  
 23 MS. SEN: Right.  
 24 HEARING OFFICER NOE: But if I say, how  
 25 many days this week are you working, and you tell

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1 me five, that's a response that you can say.

2 MS. SEN: There was certainly one point  
3 in which you said that that's not the question  
4 I'm asking. Which you did ask her--

5 HEARING OFFICER NOE: (Interposing) Why  
6 don't you get--why don't you show counsel that  
7 question, and perhaps we can go and take a look  
8 at those specific questions, even though I don't  
9 have the transcript.

10 MS. STEWART: Okay.

11 MS. SEN: Do you--

12 HEARING OFFICER NOE: (Interposing) I  
13 don't have it. But why don't you just call it  
14 out to her, and she'll take a look at it. Page  
15 number?

16 MS. SEN: 238.

17 HEARING OFFICER NOE: 238, line?

18 MS. SEN: Really the whole page.

19 HEARING OFFICER NOE: The whole page.

20 So why don't you read that into the record?

21 MS. STEWART: Well, these are--okay.

22 HEARING OFFICER NOE: Read it into the  
23 record.

24 MS. STEWART: Me?

25 HEARING OFFICER NOE: Yes.

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1 MS. STEWART: Okay. This is actually  
2 Hearing Officer Noe asking questions. It says, I  
3 have some questions. Ask her if she remembers  
4 the IEP meeting of May 22nd, 2012. Does she  
5 remember the IEP? Ms. M [REDACTED]: the IEP? Hearing  
6 Officer Noe: No, not the IEP, the meeting. Ms.  
7 [REDACTED]: Yes. Hearing Officer Noe: Ask her if  
8 she remembers saying anything during the meeting  
9 to anyone. Ms. M [REDACTED]: The only thing that they  
10 say that they going change was the  
11 classification. Hearing officer Noe: I'm asking  
12 what she said. Anything that she may have said  
13 at the meeting. Ms. M [REDACTED]: I say if they  
14 change the classification, it's good for--it's  
15 for his good. For his preparation is the most  
16 important to me and for him.

17 HEARING OFFICER NOE: Okay, stop there.  
18 On that page, what was it that she told you that  
19 was inaccurate, or her misunderstanding about  
20 that page?

21 MS. SEN: We have--I have not reviewed  
22 the transcript with my client, because I  
23 understood from your e-mail that we were coming  
24 back to do direct and cross-examination. But--

25 HEARING OFFICER NOE: (Interposing) No,  
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1 I'm not--I can't just start all over again and  
 2 throw out this cross-examination. It's sworn  
 3 testimony.  
 4 MS. SEN: Okay.  
 5 HEARING OFFICER NOE: So I thought she  
 6 had said--I thought she called you up and said,  
 7 listen--  
 8 MS. SEN: (Interposing) She did, but  
 9 before we got the transcript.  
 10 HEARING OFFICER NOE: Okay, so when she  
 11 did that, what did she--  
 12 MS. SEN: (Interposing) So--at which  
 13 point it was--I mean, it's very difficult when  
 14 you say the translation is not good to be able to  
 15 identify exactly what was confusing, because the  
 16 point is, is that it was confusing.  
 17 HEARING OFFICER NOE: Well, I think it's  
 18 confusing is a very broad statement, okay? Life  
 19 is confusing sometimes, right? But this is a  
 20 very serious situation where somebody's coming  
 21 back and saying, I want to answer the questions  
 22 over again. I think they would be more specific.  
 23 MS. SEN: I--  
 24 HEARING OFFICER NOE: (Interposing) So  
 25 was it just--go ahead.

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1 MS. SEN: I could go through the  
 2 transcript with her and ask her if she feels like  
 3 what she said was accurate.  
 4 HEARING OFFICER NOE: Well, whether she  
 5 said it was accurate, now you're asking her a  
 6 different question. You're saying the  
 7 translation wasn't good.  
 8 MS. SEN: Right.  
 9 HEARING OFFICER NOE: Okay, was it the  
 10 translation of the questions, or the translation  
 11 of the answers?  
 12 MS. SEN: Both, as I understand it.  
 13 HEARING OFFICER NOE: Okay. So she's  
 14 stating that the translation of the questions as  
 15 for example, on this page, were not accurately  
 16 translated.  
 17 MS. SEN: As far as she could tell,  
 18 sitting in the hearing with the - - , yes.  
 19 HEARING OFFICER NOE: Well, I'm not--I  
 20 really don't understand, because if she doesn't  
 21 understand English that well, how is it that she  
 22 made this determination throughout her entire  
 23 testimony that neither the questions nor the  
 24 answers were accurate?  
 25 MS. SEN: I'm sure it's very difficult

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1 to determine, because she doesn't understand  
2 English well. But that was what she communicated  
3 to me was the case.

4 HEARING OFFICER NOE: Well, why don't we  
5 have her testify now and tell us what she feels  
6 about her cross-examination? And we'll see if  
7 she agrees with this translator. Okay? So let's  
8 go on the record, and why don't you just ask--

9 MS. SEN: (Interposing) Wait--we are not  
10 on the record now?

11 HEARING OFFICER NOE: We are on the  
12 record. We're on the record. I mean let's go--  
13 let's get her testimony on the record.

14 MS. SEN: Okay, just--

15 HEARING OFFICER NOE: (Interposing) And  
16 why don't you make an inquiry--you, as her  
17 attorney, make an inquiry in general not direct,  
18 not cross, but let's find out what it is that she  
19 was having a problem with. Okay?

20 MS. SEN: Ms. M [REDACTED]? At the hearing on  
21 June 6th, 2013, what was your--did you have any  
22 concerns about the translation?

23 MS. M [REDACTED] (THROUGH INTERPRETER): Yes,  
24 she translated way too fast while she was--I was  
25 listening to the translation while the official

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1 was--the lawyer was talking.

2 MS. SEN: Did you have--

3 MS. M [REDACTED]: With the little English  
4 that I understand, I felt that she didn't  
5 translate well at all.

6 MS. SEN: I'm not sure that's exactly  
7 what she just said.

8 INTERPRETER: No, she did. (asks Ms.  
9 M [REDACTED] a question in Spanish, Ms. M [REDACTED] replies)  
10 That's what she said.

11 MS. SEN: Okay, I'm sorry. I heard the  
12 word completa (phonetic). Is that--

13 INTERPRETER: (Interposing) No. She  
14 didn't translate completely.

15 MS. SEN: Completely?

16 INTERPRETER: Yes, uh-huh.

17 MS. SEN: That's fine.

18 MS. M [REDACTED]: She was also like, not  
19 comfortable, because she also was, you know,  
20 saying that oh, I don't know how long I have to  
21 be here. I have to go somewhere.

22 MS. SEN: The interpreter was?

23 MS. M [REDACTED]: The interpreter, yes.

24 HEARING OFFICER NOE: Did she understand  
25 the questions?

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1 MS. M [REDACTED]: The questions that the  
 2 interpreter made?  
 3 HEARING OFFICER NOE: Any questions at  
 4 all that were asked in this room.  
 5 MS. M [REDACTED]: I did not understand her  
 6 well. What happens is, I didn't want to make her  
 7 feel bad, telling her that I didn't feel good.  
 8 HEARING OFFICER NOE: So she didn't  
 9 understand the questions from all day long?  
 10 MS. M [REDACTED]: I understood parts of it.  
 11 HEARING OFFICER NOE: Which parts didn't  
 12 she understand?  
 13 MS. M [REDACTED]: I didn't feel she  
 14 translated well, so I was confused.  
 15 HEARING OFFICER NOE: Well, I guess  
 16 we'll have to recall all these witnesses over  
 17 again. Let's set this down for another date in  
 18 July, and we'll recall all the witnesses. I'm  
 19 not going to strike this testimony. We will  
 20 consider it, and we will recall all the  
 21 witnesses.  
 22 If the Parent is claiming that she  
 23 didn't understand the questions, then she  
 24 couldn't possibly understand the answers of  
 25 either the witnesses, and then counsel didn't

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1 have the right to represent her client properly.  
 2 MS. STEWART: Well, the question that I  
 3 have is, why do we need to recall all of the  
 4 witnesses? The Parent--  
 5 HEARING OFFICER NOE: (Interposing) She  
 6 doesn't--  
 7 MS. STEWART: (Interposing) The Parent's  
 8 attorney requested that the transcripts be  
 9 translated into Spanish for Parent. The Parent  
 10 can review those transcripts, and if she wants  
 11 for them to testify about things that they said,  
 12 then I suppose she can testify about that. But I  
 13 don't see why they need to present their  
 14 testimony again.  
 15 Especially considering the Cooke Center.  
 16 They're very well-versed at these cases, I've had  
 17 these witnesses on a number of cases. For them  
 18 to have listened to all of my cross, I think the  
 19 department would be definitely prejudiced to have  
 20 those witnesses testify again.  
 21 HEARING OFFICER NOE: Well--  
 22 MS. SEN: (Interposing) It would be  
 23 adequate to me if the Parent had an opportunity  
 24 to review a translated transcript.

25 HEARING OFFICER NOE: And then what?  
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1 MS. SEN: Testify herself.

2 HEARING OFFICER NOE: And then call her

3 again, and testify again?

4 MS. SEN: For her cross-examination.

5 HEARING OFFICER NOE: And then we--you

6 keep saying cross-examination, but this counsel

7 doesn't seem to have any addition cross-

8 examination questions.

9 MS. STEWART: Also, I never asked the

10 Parent about--through my original cross--I didn't

11 ask the Parent about testimony that earlier

12 witnesses had given, so even if she reads their

13 transcripts, that doesn't mean that I'm now going

14 to say, oh, do you remember when Katherine

15 Hibberd said this? That's not what I asked her

16 when I did my original cross. I didn't ask her

17 about other witnesses' testimony.

18 HEARING OFFICER NOE: I don't know if

19 her own counsel had the benefit of her client's

20 understanding of what went on during examination

21 or cross-examination. She may not have been

22 represented properly. She didn't understand it.

23 So what is it that you want to do?

24 MS. SEN: Because of the availability of

25 my witnesses, because it's now the summer, it

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1 seems that it is probably not feasible to recall

2 all of them. But I would like to have an

3 opportunity for the Parent to review their

4 testimony, in terms of translating the

5 transcript.

6 HEARING OFFICER NOE: Okay, and then

7 when she reviews their testimony, and maybe she

8 didn't understand something that was said, then

9 what?

10 MS. SEN: Well, I would ask that--I

11 mean, it would be similar conditions to what

12 would have happened at the hearing had she

13 understood the testimony. So then she would be

14 questioned following their testimony, in terms of

15 understanding it. So we would come--are you

16 getting anything that I'm saying?

17 MALE VOICE 1: They got this in here.

18 MS. SEN: Because I think I might be--

19 MALE VOICE 1: - - .

20 MS. SEN: I was saying--because I don't--

21 -I wasn't--they missed a lot of what I said on

22 the last transcript. So I wanted to be sure. So

23 I guess what I'm asking is then that they

24 translate the transcript so that my client can

25 review it, the same as she would have been able

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1 to hear it had we been in the hearing. And then  
 2 that my client be called for testimony, just as  
 3 she was in the hearing after the witnesses--after  
 4 having an opportunity to review the transcript.

5 HEARING OFFICER NOE: Well, okay. So  
 6 let's put this on, even though I'm writing a  
 7 decision tonight, because the compliance date is  
 8 already gone past this case. Let's put this on  
 9 for another date in July, because I'm not  
 10 available until July--I think--2nd, I would say.  
 11 I have looked at my calendar.

12 MS. STEWART: Well, I mean, given the--

13 HEARING OFFICER NOE: (Interposing) July  
 14 2nd or July 3rd.

15 MS. STEWART: Given the issues with the  
 16 interpreter and the translation of the affidavit,  
 17 I believe that we would need an extension of the  
 18 compliance date.

19 HEARING OFFICER NOE: Well, somebody's  
 20 got to make a motion, if you want to make that.

21 MS. STEWART: Well, I'm making that  
 22 motion now, because we--last week we requested  
 23 the Hearing Office to make an official  
 24 translation of the Parent's affidavit, which was  
 25 submitted in Spanish. Just today--just now

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1 during the course of this hearing, we received an  
 2 English translation, and we believe that the  
 3 Hearing Officer needs an opportunity to review  
 4 those transcripts.

5 And also, there's been an issue raised  
 6 as far as the quality of the interpreter at the  
 7 last hearing date, which was over a week ago. So  
 8 I think we would need an extension of the  
 9 compliance date to resolve these issues.

10 HEARING OFFICER NOE: All right, so  
 11 that's granted. Now what's next?

12 MS. STEWART: What's next?

13 HEARING OFFICER NOE: Well, I have to  
 14 find out if the Impartial Hearing even  
 15 transcribes these transcripts.

16 MS. STEWART: No, they're--the--

17 HEARING OFFICER NOE: (Interposing) They  
 18 do it?

19 MS. STEWART: --they said that they  
 20 would start the process the same day.

21 HEARING OFFICER NOE: Okay, so we'll  
 22 have them transcribe the transcripts, okay.

23 MS. STEWART: I don't know how long it  
 24 takes, that's another question.

25 HEARING OFFICER NOE: Transcripts, okay,

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1 and then at least Parent's counsel is--I think  
 2 you're alluding--I don't know if you're saying--  
 3 that you want her to come back and re-answer the  
 4 questions that she was asked already.  
 5 MS. SEN: Yes.  
 6 HEARING OFFICER NOE: Okay. And you're  
 7 objecting to that, right?  
 8 MS. STEWART: Yes.  
 9 HEARING OFFICER NOE: Well, you know  
 10 what? Let's make a date, we'll come back, and  
 11 I'll make my decision then, on July 3rd at--what  
 12 time can you both come on July 3rd? I'm  
 13 available.  
 14 MS. STEWART: Let me just--  
 15 MS. SEN: (Interposing) I'm available  
 16 all day.  
 17 MS. STEWART: Yes, I'm available all  
 18 day.  
 19 HEARING OFFICER NOE: Okay so, let's  
 20 make it July 3rd at 10:00. Okay, and we'll  
 21 review that. Hopefully I'll put in that order to  
 22 get the transcripts. We'll review that, and  
 23 we'll see if she can re-testify as to her  
 24 problems with the questions or the answers or  
 25 whatever it is that she is objecting to.

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1 MS. STEWART: She wants to be able to  
 2 review the other witness's testimony first? Is  
 3 that the issue?  
 4 HEARING OFFICER NOE: She's going to  
 5 review everything.  
 6 MS. STEWART: Okay.  
 7 MS. SEN: I actually renew my  
 8 application to translate the affidavits again, in  
 9 light of the recent--  
 10 HEARING OFFICER NOE: (Interposing) The  
 11 affidavit's been translated. How many other--  
 12 MS. SEN: (Interposing) English  
 13 affidavits. Into Spanish, which is what I made  
 14 an application--  
 15 HEARING OFFICER NOE: (Interposing) I'll  
 16 ask the Impartial Hearing Office before I do  
 17 that. All right? I'll ask them if they do that.  
 18 If they do that, you can have it. If not, you  
 19 can't. I'll see you both on July 3rd.  
 20 MS. SEN: Well, Ms. Machado had  
 21 previously told us that they do do it, and  
 22 actually, that's one of the e-mails that--  
 23 HEARING OFFICER NOE: (Interposing) I'm  
 24 going to ask them right now.  
 25 MS. SEN: --I wanted to put into

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1 evidence.

2 HEARING OFFICER NOE: Okay, I'm going to  
3 ask them right now. I'm not allowing you to put  
4 any e-mails in evidence to Melissa Machado, but I  
5 will make that request right now when I walk over  
6 there. Transcripts and the affidavits.

7 MS. SEN: Can I make my application to  
8 put these e-mails in evidence?

9 HEARING OFFICER NOE: No. July 3rd.

10 MS. SEN: Okay.

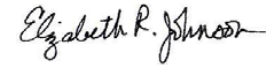
11 (Whereupon, at 3:42 p.m. the proceeding  
12 was adjourned.)

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C E R T I F I C A T I O N

I, Elizabeth Johnson, do hereby certify that  
I typed the transcript In the Matter of J [REDACTED] S [REDACTED]  
taken on June 19th, 2013, by Donovan Harris at the  
offices of the Department of Education, 131 Livingston  
Street, Brooklyn, New York 11201, and that to the best  
of my ability, this is an accurate transcription of  
what was recorded at that time and place.



ELIZABETH JOHNSON, Transcriber

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1 - example

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